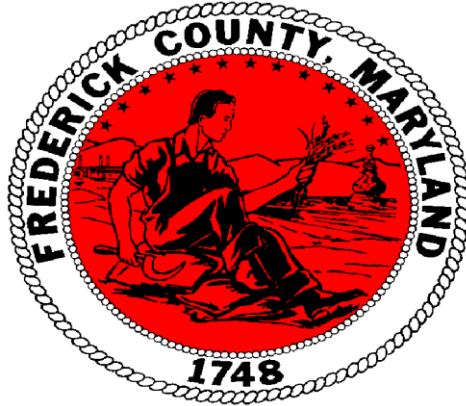


**THE BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MD**

REQUEST FOR PROPOSALS (RFP) #13-09

**ENERGY EFFICIENCY AUDITS AND RETROFITS
FOR THE
POWER SAVER RETROFITS PROGRAM**



**PROCUREMENT AND CONTRACTING DEPARTMENT
WINCHESTER HALL
12 East Church Street
Frederick, MD 21701**

Pre-Proposal Conference:
August 28, 2012 at 9:00 A.M.
Winchester Hall
Procurement Conference Room – First Floor

Proposal Due Date:
September 14, 2012 at 4:00 P.M.
Winchester Hall
Procurement Conference Room – First Floor

Steven Joseph, CPPB
Procurement Analyst III
Phone: (301) 600-6806
Fax: (301) 600-2521

sjoseph@frederickcountymd.gov

<http://frederickcountymd.gov/index.aspx?NID=1117>

Issued: August 17, 2012

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IMPORTANT:
ADVISE THE PROCUREMENT AND CONTRACTING DEPARTMENT IMMEDIATELY
IF ANY OF THE ABOVE DOCUMENTS ARE NOT ENCLOSED.

DOCUMENT A

GENERAL CONDITIONS

- 1 INSTRUCTIONS, FORMS AND SPECIFICATIONS: Instructions, forms, and specifications may be obtained from the Department of Procurement and Contracting by: PHONE 301-600-1067, FAX 301-600-2521, Monday through Friday from 8:00 A.M. to 4:00 P.M. and from the Internet at: <http://frederickcountymd.gov/index.aspx?NID=1117>
- 1.1 All proposals are to be submitted on and in accordance with forms for this purpose, which are available at the Department of Procurement and Contracting. Additional supplementary documentation when requested shall be submitted on the Contractor's letterhead.
- 1.2 All proposals must be clearly identified on the front of the envelope or top of the carton with the solicitation number, title of the solicitation and the due date and time.
- 1.3 All proposals must be signed by an authorized officer or agent of the company submitting the proposal and delivered in sealed envelopes or cartons to the Department of Procurement and Contracting, 12 East Church Street – First Floor, Frederick, MD 21701 no later than the time and date indicated. Proposals received after the time and date indicated will not be considered.
- 1.4 Each proposal shall be accompanied by an affidavit regarding price fixing, gratuities, bribery, and discriminatory employment practices. When the Contractor is a corporation, a duly authorized representative of said corporation shall execute the affidavit. Affidavit forms are provided in the solicitation package.
- 1.5 Additional information or clarification of any of the instructions or information contained herein may be obtained from the Department of Procurement and Contracting.
- 1.6 Any Contractor who finds a discrepancy in or omission from the specifications, or is in doubt as to their meaning, or feels that the specifications are discriminatory, shall notify the Procurement and Contracting Director in writing not later than five days prior to the scheduled opening of proposals. Exceptions taken do not obligate the County to change the specifications. The Procurement and Contracting Director will notify all Contractors of any changes, additions or deletions to the specifications by addenda posted on the Department of Procurement and Contracting website: <http://frederickcountymd.gov/index.aspx?NID=1117>
- 1.7 The County will assume no responsibility for oral instructions or suggestions. All official correspondence in regard to the specifications shall be directed to and will be issued by the Director of Procurement and Contracting. Proposals may not be withdrawn during this period.

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- 1.8 Unless otherwise specified, all formal proposals submitted shall be irrevocable for 4 months following proposal opening date, unless the Contractor(s), upon request of the Director of Procurement and Contracting, agree to an extension.

2. RESERVATIONS:

- 2.1 The Director of Procurement and Contracting reserves the right to reject any or all proposals or parts of proposals when, in the Director of Procurement and Contracting's reasoned judgment, the public interest will be served thereby.
- 2.2 The Director of Procurement and Contracting, with the approval of the Board of County Commissioners of Frederick County, MD may waive formalities or technicalities in proposals as the interest of the County may require.
- 2.3 The Director of Procurement and Contracting reserves the right to increase or decrease the quantities to be purchased at the prices proposed. The quantity intended to be purchased and the period and percentage amount of any such reservation will be stated in the specifications or proposal.
- 2.4 The Director of Procurement and Contracting reserves the right to award contracts or place orders on a lump sum or individual item basis, or such combination as shall, in the Director of Procurement and Contracting's judgment be in the best interest of the County.
- 2.5 The Director of Procurement and Contracting may waive minor differences in specifications provided these differences do not violate the specification intent nor materially affect the operation for which the services are being purchased.

3 DELIVERY:

- 3.1 Contractors shall guarantee delivery of services in accordance with such delivery schedule as may be provided in the specifications and proposal.
- 3.2 All items shall be delivered F.O.B. Destination, Inside Delivery, and delivery costs and charges included in the proposal unless otherwise stated in the specifications or proposal.
- 3.3 The Director of Procurement and Contracting reserves the right to charge the Contractor or vendor for each day the services are not delivered in accordance with the delivery schedule. The per diem charge may be invoked at the discretion of the Director of Procurement and Contracting and said sum to be taken as liquidated damages and deducted from the final payment, or charged back to the Contractor or vendor.
- 3.4 The Director of Procurement and Contracting reserves the right to procure the services elsewhere on the open market if delivery is not made as specified, in which event, the extra cost of procuring the services may be charged against the Contractor and deducted from any monies due or which may become due him.

4 COMPETITION:

- 4.1 A Contractor may offer only one price on each item though they may have two or more types that meet specifications. Contractors must determine for themselves

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which to offer. Submission by a single Contractor of more than one price for a single item shall be sufficient cause for rejection of all prices for that item submitted by the Contractor.

- 4.2 Proposals which show any omission, irregularity, alteration of forms, additions not called for, conditional or unconditional unresponsive proposals, or proposals obviously unbalanced may be rejected.
- 4.3 All proposals must be accompanied by descriptive literature as may be called for by the specifications or proposal. Specifications provided are based on County needs and uses, estimated costs of operation and maintenance, and other significant and/or limiting factors to meet County requirements and shall be consistent with County policies. Minimum specifications, and maximum specifications, where included, are not established arbitrarily to limit competition or to exclude otherwise competitive Contractors.

5 PROTEST:

- 5.1 An interested party may protest to the Procurement and Contracting Director the award or the proposed award of a contract for supplies, services or construction. Interested party means an actual or prospective bidder, offeror or Contractor that may be aggrieved by the solicitation or award of a contract or by the protest. Protestor means any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files the protest. The protest must be in writing and addressed to the Procurement and Contracting Director.
- 5.2 Protest based upon alleged improprieties in any type of solicitations that are apparent before the proposal opening or the closing date for receipt of initial proposals must be filed before proposal opening or the closing date and time for the receipt of the proposal. In all other cases proposal protests must be filed not later than seven (7) days after the basis for protest is known or should have been known, whichever is earlier. The term "filed" means received in the Procurement and Contracting Department. Any protest filed after the time limit prescribed above will not be considered.
- 5.3 The written protest must include at a minimum the name and address of the protestor, identification of the procurement, and, if a contract has been awarded, its number, if known, reason(s) for the protest and supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date must be indicated.
- 5.4 The Procurement and Contracting Director will submit a copy of the protest to the County Attorney upon receipt of the protest.
- 5.5 Any additional information requested of the protestor by the Procurement and Contracting Director must be submitted within five (5) days after receipt of notification in order to expedite consideration of the protest. Failure to comply

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with a request for information by the Procurement and Contracting Director may result in a resolution of the protest without consideration of any information that is untimely filed pursuant to such request.

- 5.6 Upon written request, the Procurement and Contracting Director will make available to any interested party information submitted that bears on the substance of the protest except when information is proprietary or otherwise permitted or required to be withheld by law or regulation.
 - 5.7 A decision on a protest will be made by the Procurement and Contracting Director in writing as expeditiously as possible after receiving all relevant, requested information. Before issuance, the decision of the Procurement and Contracting Director will be reviewed by the County Attorney.
 - 5.8 Should the department head of the County agency originating the proposal or the protestor disapprove of the Procurement and Contracting Director's decision, they may appeal the decision to the Board of County Commissioners within seven (7) days after receipt of the decision. All information used to support the protest and the decision of the Procurement and Contracting Director will be made available to the Board of County Commissioners.
 - 5.9 A written decision on the protest shall be made expeditiously by the Board of County Commissioners and deemed the final action on the protest.
- 6 **DISPUTES:** In cases of disputes as to whether or not a service quoted or delivered meets specifications, the decision of the Director of Procurement and Contracting, or authorized representatives, shall be final and binding on all parties. The Director of Procurement and Contracting may request, in writing, the recommendation of the head of the County agency using the item or other objective sources.
 - 7 **EXCEPTIONS:** The submission of a proposal shall be considered an agreement to all the terms, conditions, and specifications provided herein and in the various proposal documents, unless specifically noted otherwise in the proposal.
 - 8 **UNIT PRICES:** Unless clearly shown on the proposal that it is the intent that a reduced total price is being offered on the basis of receiving an award of all items covered by the total, any totals should be the actual sum of the extension of unit prices. Otherwise, in the event of any discrepancy between a unit price(s), extended price(s), and/or total price(s), unit prices will govern and the proposal will be refigured accordingly.
 - 9 **NON-WAIVER:** Any waiver of any breach of covenants herein contained to be kept and performed by the Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same condition of covenant or otherwise.

10 GOVERNING LAW:

- 10.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate federal or state court located within the State of Maryland.
- 10.2 The laws of Maryland and Frederick County shall govern the resolution of any issue arising in connection with the contract, including, but not limited to, all questions on the validity of the contract, the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties hereunder.
- 10.3 Contractors must be registered to do business in, and must be in good standing in, the State of Maryland. Contractors not registered must obtain registration information from the Maryland Department of Assessments and Taxation (DAT) website at: www.dat.state.md.us/ or by calling at (410) 767-1340 or Toll Free (888) 246-5941.

11 COMPLIANCE WITH LAWS: If awarded a contract, the Contractor hereby represents and warrants that it:

- 11.1 Is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- 11.2 Is not in arrears with respect to the payment of any monies due and owing the County, or any department or agency thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract.
- 11.3 Shall comply with all federal, state, and local laws, ordinances, and legally enforceable rules and regulations applicable to its activities and obligations under the contract.
- 11.4 Shall procure, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under the contract.
- 11.5 Agrees that the facts and matters set forth hereafter in the contract and made a part hereof are true and correct.

In addition to any other remedy available to the County, breach of any of the paragraphs of this clause shall, at the election of the County, be grounds for termination. Failure of the County to terminate the contract shall not be considered or construed as a waiver of such breach nor as a waiver of any rights or remedies granted or available to the County.

12 HOLD HARMLESS/INDEMNIFICATION:

- 12.1 The Contractor shall indemnify and hold the County harmless from and against all liability and expenses, including reasonable attorney's fees, howsoever arising or

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incurred, alleging damage to property or injury to, or death of, any person arising out of or attributable to the Contractor's performance of the contract awarded, provided that the Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.

- 12.2 Any property or work to be provided by the Contractor under this contract will remain at the Contractor's risk until written acceptance by the County; and the Contractor will replace, at Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

13 TERMINATION:

- 13.1 Termination for Convenience: The performance of work under this contract may be terminated by the County, with concurrence of the Department, in accordance with this clause in whole, or from time to time in part, whenever the County determines that such termination is in the best interest of the County. The County will pay all reasonable costs associated with this contract that the contractor has incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the contractor will not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

- 13.2 Termination for Default: If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the County may terminate the contract, with concurrence of the Department, by written notice to the Contractor. The notice will specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the contractor will, at the County's option, become the County's property. The County shall pay the contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the contractor will remain liable after termination and the County can affirmatively collect damages.

- 14 AVAILABILITY OF FUNDS: The contractual obligation of the County under this contract is contingent upon the availability of appropriated funds from which payment for this contract can be made.

- 15 INTEGRATION: These proposal documents, Contractor's response to this solicitation, and subsequent purchase order(s) to the successful Contractor contain the entire understanding between the parties and any additions or modifications hereto may only be made in writing executed by both parties.

- 16 NON-ASSIGNMENT OF CONTRACT: The Contractor shall not assign the contract, or any portion thereof, except upon the written approval of the Director of Procurement and Contracting.

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- 17 AFFIDAVIT: The attached affidavit is provided to facilitate your compliance with the applicable law.
- 18 PUBLIC INFORMATION/PROPRIETARY/CONFIDENTIAL INFORMATION:
- 18.1 The County operates under a public information law, which permits access to most records and documents.
- 18.2 Proposals will be available for public inspection after the award announcement, except to the extent that a Contractor designates trade secrets or other proprietary data to be confidential. Material designated as confidential must be readily separable from the remainder of the proposal to facilitate public inspection of the non-confidential portion of the proposal. A Contractor's designation of material as confidential will not necessarily be conclusive, and the Contractor may be required to provide justification why such material should not be disclosed, on request, under the Maryland Access to Public Records Act, State Government Article, Sections 10-611 through 10-628, of the Annotated Code of Maryland.
- 19 COOPERATIVE PURCHASE:
- 19.1 The County reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting from this proposal to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools. This is conditioned upon mutual agreement of all parties pursuant to special requirements which may be appended thereto. The Contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this proposal and will also provide usage information, which may be requested.
- 19.2 The County assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from this proposal. All purchases and payment transactions will be made directly between the Contractor and the requesting entity. Any exceptions to this requirement must be specifically noted in the proposal response.
- 20 CONTRACT SERVICES AGREEMENT:
- 20.1 The County and Contractor must execute a Contract Services Agreement, which is attached for your review, resulting from the award of this solicitation. Exceptions, if any, to the County's standard Agreement must be noted in your proposal to be considered during evaluation. Exceptions to the County's standard Agreement may result in rejection of your bid.
- 20.2 Do not fill in or sign the sample Agreement attached. The County will prepare an Agreement specific to this solicitation for execution by the successful Contractor.

DOCUMENT B

**ENERGY EFFICIENCY AUDITS AND RETROFITS
FOR THE POWER
SAVER RETROFITS PROGRAM**

SPECIFICATIONS

1 SCOPE:

- 1.1 Frederick County, Maryland, (hereinafter called the “County”), is seeking proposals from qualified firms (hereinafter called “Contractor”) to perform home energy audits and energy efficiency retrofits for the Power Saver Retrofits Program.
- 1.2 If qualifying proposals are received, two contracts will be awarded and the selected contractors will each be assigned a portion of homes on a rotating basis, totaling 85 homes, 2600 square feet or less in size.
- 1.3 Tracking of project progress and household participation will occur through use of an online database called LongJump used by each contractor and the Energy Efficiency Access Project (EEAP) Coordinator.

2. BACKGROUND:

- 2.1 Frederick County is part of the "Golden Triangle", located 45 minutes from both Baltimore and Washington, D.C. The largest county in Maryland at 663 square miles, Frederick is also Maryland's fastest growing county in the Washington metro region and contains Frederick City, the second largest city in Maryland. The County is home to approximately 243,000 residents and 9,000+ businesses employing 91,000+ workers. Governed by an elected Board of County Commissioners (BoCC), the County operates under a form of government called "non-home rule" with the five-member BoCC serving as the County's legislative body. County services include police, fire and rescue, corrections, public works, planning and zoning, landfill, water and sewer, and parks and recreation. Currently the County's general obligation debt is rated AAA by Moody's Investors Service, Standard & Poor's and Fitch IBCA.
- 2.2 The Frederick County Office of Sustainability and Environmental Resources (OSER) operates a residential outreach program called the Green Homes Challenge. This program is comprised of three components: Be a Power Saver, Be a Green Leader, and Be a Renewable Star which respectively help households to conserve energy, make their homes more environmentally-friendly, and use renewable energy.

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- 2.3 Frederick County was recently awarded a Be SMART Aggregated Energy Efficiency Services grant from the Maryland Department of Housing and Community Development (DHCD) for implementation of a new initiative called the Energy Efficiency Access Project (EEAP). The grant application and budget transfer were approved by the Board of County Commissioners of Frederick County (“BoCC”) on February 23, 2012 and the grant was awarded in July, 2012.
 - 2.4 One component of the EEAP is Power Saver Retrofits which aims to assist Frederick County households with energy efficiency improvements through funding and personal guidance. Frederick County has grant funding available to supply 85 Frederick County households with \$1,600 worth of energy efficiency audits and retrofits per household. Each participating household will also be expected to contribute \$400, for a total value of \$2,000 worth of audit and retrofits per household.
3. **PRE-PROPOSAL CONFERENCE:**

A Pre-Proposal Conference will be held on **August 28 2012, at 9:00 A.M.** in the Procurement and Contracting Conference Room, First Floor, 12 East Church Street, Frederick, Maryland 21701 to discuss objectives and answer questions relating to this Request for Proposals. Contractor’s attendance is not required but is strongly encouraged.
4. **QUESTIONS AND INQUIRIES:**

Questions concerning this Request for Proposals must be addressed in writing to Steven Joseph, CPPB, FAX number (301) 600-2521 or e-mail sjoseph@frederickcountymd.gov and delivered no later than **September 6, 2012 at 4:00 P.M.**
5. **CONTRACT PERIOD:**

The contract period shall be for approximately 6 months commencing on or about November 1, 2012 after approval and proper execution of the contract documents, and ending April 30, 2013.
6. **CONTRACTOR’S MINIMUM QUALITFICATIONS**
 - 6.1 Contractors shall be primarily and actively engaged in the business of providing energy audits and energy efficiency retrofit services for a minimum of three years.
 - 6.2 Contractors shall have a proven record of having provided energy audit and energy efficiency retrofit services of similar (or greater) size and complexity to those required for this project. Contractor must have experience managing multiple projects/clients at once.

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- 6.3 Contractors shall be licensed by the Maryland Home Improvement Commission Board (MHIC) and have a current MHIC number.
- 6.4 At least one key member of the Contractor's staff shall possess a Building Analyst Professional Certification from the Building Performance Institute (BPI).
- 6.5 Contractor shall be a registered (or in the process of becoming so) contractor in the Potomac Edison Maryland Home Performance with ENERGY STAR® Program. [Potomac Edison Home Performance with Energy Star](#)
- 6.6 Contractor shall be accepted, qualified and registered (or in the process of becoming so) to perform work as a Be SMART Home Complete Contractor under the Be SMART Home Energy Efficiency Rebate Program. [Be Smart Home Energy Efficiency Rebate Program](#)
- 6.7 Contractors who have applied to become registered in the Potomac Edison Maryland Performance with Energy Star and Be Smart Home Efficiency Rebate Program must be approved by both programs prior to contract award.
- 6.8 Contractor shall work in full compliance with all American Recovery and Reinvestment Act (ARRA) Special Terms and Conditions (see Attachment 8).
- 6.9 Contractor shall retain all necessary licensures, certifications, training, and other requirements deemed necessary by state law and the program policies and guidelines, including all relevant documentation pertaining to the installation of efficiency measures.
- 6.10 Contractor shall maintain effective procedures for quality control, resolution of customer complaints or disputes, and response to customer emergencies.
- 6.11 Contractor shall possess an email address and a computer with access to the Internet.

7. CONTRACTOR'S REQUIREMENTS:

The Contractor will provide the following services to the County for the Power Saver Retrofits Program:

- 7.1 The work required under this contract is to perform home energy audits and energy efficiency retrofits in up to 85 Frederick County homes. If qualifying proposals are received, two contracts will be awarded and the Contractors will each be assigned a portion of homes on a rotating basis, totaling 85 homes. Specifications for home energy audits and energy efficiency retrofits are detailed following the Procedures for Homes Selected for Audit below.

Tracking of project progress and household participation will occur through use of an online database called LongJump used by each Contractor and the Energy Efficiency Access Project (EEAP) Coordinator.

Prior to the start of any energy audits or energy efficiency retrofits, the selected Contractor will attend a training during which the EEAP Coordinator will instruct them on:

- 7.1.1 The use of LongJump.
- 7.1.2 Protocol for household assignments, energy audits, submitting audit reports and project proposals, completing retrofits, and invoicing the homeowner and Frederick County
- 7.1.3 The Contractor's role regarding household engagement with the Power Saver Challenge
- 7.1.4 Protocol for acting as a partner to Frederick County through the Power Saver Retrofits, Energy Efficiency Access Project, Power Saver Challenge, and Green Homes Challenge programs.

7.2 Procedures for Homes Selected for Audit:

The EEAP Coordinator collects application form from interested household and approves it for participation in the Power Saver Retrofits Program. EEAP Coordinator will verify household status under National Historic Preservation Act. The following are requirements for household participation:

- 7.2.1 The household must be located in Frederick County, Maryland.
- 7.2.2 Homes greater than 2,600 square feet in size will not be eligible for participation.
- 7.2.3 Homes with atmospherically vented or unvented combustion appliances within the conditioned envelope of the home are not eligible for participation. The one exception to this rule is gas ranges/ovens, which are permitted to be unvented to the outdoors (in this case, exhaust ventilation should be recommended to the homeowner by the Contractor but is not required for participation in the Power Saver Retrofits Program).
- 7.2.4 The household must register for the Green Homes Challenge and pledge to work toward their Power Saver Challenge Certification.
- 7.2.5 The household must agree to get a comprehensive energy audit and contribute a minimum of \$400 towards the total cost of their Power Saver Retrofits in order to receive up to \$1,600 in grant funds to be applied towards eligible projects..
- 7.2.6 The household must consent to sharing household energy usage information (including electric, gas, and other fuel), audit report results, project plans, combustion testing results, duct testing results, and blower door testing results with Frederick County OSER.
- 7.2.7 The household must consent to an EEAP Coordinator walk-through scheduled within one (1) week of project completion. If the homeowner does not allow the EEAP Coordinator to complete the walk-through within

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two weeks of project completion, grant funds of \$1,600 may not be used to cover the project cost, and the homeowner will be responsible for the total \$1,600 cost for the audit and retrofits.

Contractor receives home assignment from the EEAP Coordinator by email or phone call. Contractor accesses household contact information through LongJump and schedules energy audit with assigned household, unless a sufficient comprehensive audit has already been completed. Contractor updates LongJump with date of initial contractor-household contact and scheduled audit date and time. Audit must be scheduled within one week of initial assignment by the EEAP Coordinator.

If a comprehensive energy audit has already been completed, the Contractor will not perform another audit. The Contractor will use the previous audit results and a home walk-through, if necessary, to create retrofit project plans. The only exceptions to this rule are if:

- a. The home had an audit performed by a company not participating in either the Potomac Edison Home Performance with ENERGY STAR® Program, or the Be SMART Program, but requires an audit through one of these programs to be eligible for the rebates.
- b. The home had a Potomac Edison Home Performance with ENERGY STAR® Program audit performed, but requires a Be SMART Program audit in order to be eligible for the Be SMART Program rebates. The homeowner would still be responsible for the audit fee.

Contractor conducts energy audit through either Potomac Edison Home Performance with Energy Star or the Be SMART Home Energy Efficiency Rebate Program and invoices homeowner upon completion for the audit cost (currently \$100 in both programs). Audit must be performed within three weeks of initial home assignment.

Contractor submits energy audit results (form used for either Be Smart Home Energy Efficiency Rebate Program or Potomac Edison Home Performance with Energy Star) to the EEAP Coordinator and assigned household within two weeks of energy audit completion.

Contractor completes additional consulting with household as necessary to complete project proposal which must include information about the Potomac Edison Home Performance with Energy Star Program and/or the Be SMART Home Energy Efficiency Rebate Program and the rebates available to homeowners through these programs. Contractor must advise homeowner on choosing projects to be completed based on available rebates. Homeowner may apply for rebates for projects completed using the \$400 homeowner contribution or additional work paid for by the homeowner beyond the \$400 homeowner contribution. The homeowner

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may not apply for rebates for projects completed with the \$1,600 Power Saver Retrofits grant funds.

As stated above, the EEAP Coordinator will check to determine if the home is considered historic under the National Historic Preservation Act during the home application process. If the home is an historic structure under the National Historic Preservation Act and project plans are not exempt from review and approval by the Maryland State Historic Preservation Office the Contractor must notify the Department of Housing and Community Development and the State Historic Preservation Officer (SHPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. In these cases where projects are referred to the SHPO for approval the contractor may not begin work on these projects until documented approval has been received from SHPO. In the case when SHPO approval is necessary, the Contractor must notify the EEAP Coordinator and submit proof of SHPO approval to the EEAP Coordinator as part of the approval process.

Project plans must be submitted within three weeks of the energy audit completion. Contractor may not proceed with implementing projects without the EEAP Coordinator approval. Contractor shall submit the following two documents by email to the EEAP Coordinator as part of its proposal:

- a. Homeowner consent form signed by the homeowner, which includes items such as:
 - List of proposed projects to be covered under the \$1,600 portion of grant funds and \$400 homeowner contribution (\$300 if \$100 audit cost is paid by the homeowner during the Power Saver Retrofits Program)
 - Cost per project
 - Total cost of all projects to be covered under the \$1,600 portion of grant funds
 - Total cost of all projects to be covered under \$400 homeowner contribution (minus the audit cost if paid for by homeowner during the Power Saver Retrofits Program)
- b. Filled project plan spreadsheet, which includes items such as:
 - Project start and end dates. Proposed end date must be within one month of the date the proposed projects plan was submitted to EEAP Coordinator.
 - Number of Contractor or Contractor employee hours to be spent
 - Subcontractor names and number of subcontractor hours to be spent
 - Estimated electricity, natural gas and/or fuel saved per year due to project implementation
 - R-value and square footage of insulation to be installed

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- Estimated CFM50 post-retrofit for air sealing and duct sealing
- Old equipment or materials to be removed (e.g. old insulation)

If homeowner would like Contractor to implement additional projects over the \$2,000 limit for the Power Saver Retrofits Program (\$1,600 grant funds + \$400 homeowner contribution) or outside of the eligible project list, these arrangements will be made separately from the Power Saver Retrofits Program. The EEAP Coordinator does not need to approve these additional projects, and the County is not held responsible for any additional projects completed beyond the Power Saver Retrofits Program.

Contractor should ensure to the best of its ability that initial project plans proposed will not change. If Contractor decides for any reason during the course of project work that project plans must change, the homeowner and the EEAP Coordinator must approve the changes. Contractor must re-submit an updated and signed homeowner consent form and project plan spreadsheet and receive the EEAP Coordinator approval before enacting the changes.

Contractor performs proposed retrofits (See Specifications for Eligible Projects) in a single visit or the least number of visits possible. Contractor must keep all sites clean and must return sites to original condition after completing work. Contractor performs test out as specified in Specifications section. If results of test out do not meet requirements described in Specifications, contractor is expected to correct problem until test out does meet requirements. Upon completion of projects and attainment of acceptable test out results, Contractor notifies the EEAP Coordinator and homeowner. Retrofits must be completed before or on the proposed end date.

EEAP Coordinator schedules a walk-through with the homeowner to inspect completed projects. The walk-through will take place within two weeks of project completion. EEAP Coordinator may also use this time to work with homeowner on Power Saver Certification Form and assess their satisfaction with the Power Saver Retrofits Program.

EEAP Coordinator notifies Contractor of walk-through results. If projects were found to be completed as proposed, then Contractor invoices homeowner for \$400 contribution (\$300 if the homeowner already paid the Contractor for the \$100 audit) and invoices Frederick County for \$1,600 contribution. If Contractor completed additional projects for homeowner beyond the \$1,600 grant funds and \$400 homeowner contribution, or projects not listed on the eligible project list, Contractor may also invoice homeowner at this time if desired, as long as costs for homeowner contribution, grant funds, and additional projects are listed separately on invoice.

All audits and project proposals must be completed by April 1, 2013. All invoices must be received by April 8, 2013.

7.3 Specifications for Eligible Projects:

All work performed for each eligible project should follow the BPI Technical Standards for the Building Analyst Professional. All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards.

7.4 Home Energy Audit

The Home Energy Audit will be conducted through either the Potomac Edison Home Performance with Energy Star (PE HPwES) Program or the Be SMART Home Energy Efficiency Rebate (Be SMART) Program, both of which currently require only a \$100 fee from the homeowner. A Potomac Edison Quick Home Energy Check-Up cannot be used to satisfy the Home Energy Audit step. All audit standards for these two programs apply for energy audits completed for the Power Saver Retrofits Program.

If a comprehensive Home Energy Audit (including a blower door test) has already been completed, the Contractor will not perform another audit. The Contractor can use the previous audit results and a home walk-through to create retrofit project plans. The only exceptions to this rule are if:

- 7.4.1 The home had an audit performed by a company not participating in either the Potomac Edison Home Performance with ENERGY STAR® Program, or the Be SMART Program, but requires an audit through one of these programs to be eligible for the rebates.
- 7.4.2 The home had a Potomac Edison Home Performance with ENERGY STAR® Program audit performed, but requires a Be SMART Program audit in order to be eligible for the Be SMART Program rebates. The homeowner would still be responsible for the audit fee as a portion of their \$400 homeowner contribution.
- 7.4.3 The purpose of the Home Energy Audit is to record the physical features of the dwelling unit and identify the eligible Power Saver Retrofits that can be installed to reduce the household energy consumption and improve the customer's health and safety. In some cases, there will not be sufficient funds available to install all materials necessary to address the energy conservation needs of the home. The auditor is responsible for deciding which services are likely to be the most cost-effective.
- 7.4.4 The following tasks must be completed during a Home Energy Audit:
 - 7.4.4.1 The Contractor must perform a visual walk-through inspection of each home to identify the problems in the building's shell which promote air movement, heat loss, and heating system inefficiency. The auditor must assess the current level and effectiveness of air sealing and/or insulation in the attic, walls,

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floors, basement, crawlspace, attic access, windows, doors and ducts. The auditor will determine the specific measures necessary to increase the R-value to at least R-39 in the attic and R-19 in the basement or crawlspace, or the maximum practicable level.

- 7.4.4.2 The Contractor must assess whether any repairs are necessary before air sealing and insulation can occur. If the Contractor determines that repairs are necessary, the Contractor may not perform any repairs using the \$1,600 in grant funding or the required \$400 homeowner contribution. Any repairs performed must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. The County is not responsible or liable for these repairs which could include:

- 7.4.4.2.1 Ventilation in attic, basement or crawlspace
- 7.4.4.2.2 Elimination of roof leaks
- 7.4.4.2.3 Improvement to roof structure due to increased weight of insulation and increased snow load
- 7.4.4.2.4 Electrical work (the Contractor should visually inspect existing wiring during audit and question customer about the frequency of blowing fuses, tripping of circuit breakers, heating of switch plates or outlet covers and flickering of lights).

- 7.4.5 The auditor must assess what measures are necessary to decrease energy consumption associated with the use of hot water such as:

- 7.4.5.1 Installation of hot-water pipe insulation
- 7.4.5.2 Installation of low-flow faucet aerators and showerheads
- 7.4.5.3 Reduce temperature of water heaters to 120°F (Contractor should set water heater temperature during the audit).

- 7.4.6 The Contractor will assess the home's lighting requirements and current use of energy efficient lighting. The Contractor should assess which fixtures are used the most and these should be prioritized for replacement.

- 7.4.7 The Contractor will identify the existing HVAC unit type and determine a programmable thermostat that will work with the unit.

- 7.4.8 A Blower Door Test must be used to detect points of infiltration in the dwelling unit. The Contractor will de-pressurize (or pressurize) the interior of the structure through the use of a large capacity fan, thereby exaggerating the various points of air infiltration in the building's envelope. The Contractor will perform a pre-test to calculate air movement throughout the home in cubic feet per minute (CFM). By conducting a pre-test for the dwelling, sealing the leaks in the envelope/duct and conducting a post-test, the Contractor can determine the

total CFM50 reduction in each dwelling and also ensure that they DO NOT reduce CFM50 below the Minimum Ventilation Rate (MVR). The Contractor should calculate CFM50 using BPI Technical Standards for the Building Analyst Professional. Blower door test results must be compared to the Building Airflow Standard to verify compliance with ASHRAE 62-89 requirements for ventilation. If natural ventilation is inadequate according to ASHRAE standard, mechanical ventilation must be recommended (but cannot be paid for with \$1,600 Power Saver Retrofit funds or \$400 homeowner contribution). Fires in woodstoves and/or fireplaces must be fully extinguished prior to performing a blower door test.

- 7.4.9 Combustion appliances located inside the home may include natural gas or propane range/oven; natural gas or propane dryer; natural, gas propane or oil water heater; natural gas, propane, or oil furnace; natural gas or propane fireplace or logs; natural gas, propane, or kerosene space heater; gas, wood, or coal stove; and wood-burning fireplace.
- 7.4.10 The Contractor must verify that the home does not contain any combustion appliances that are not vented outside of the home. The one exception to this rule is gas ranges/ovens, which are permitted to be unvented to the outdoors (in this case, exhaust ventilation should be recommended to the homeowner by the Contractor but is not required for participation in the Power Saver Retrofits Program). If the home does contain a combustion appliance that is not vented to the outdoors, the Contractor must report this to the EEAP Coordinator, as the home will not be eligible for the Power Saver Retrofits Program. If the homeowner is willing to correct this problem, they may then be considered for participation.
- 7.4.11 The Contractor must perform safety testing of combustion appliances located inside the home, including sealed combustion appliances. The only combustion appliances that do not require testing are wood stoves and wood-burning fireplaces. The only combustion appliances that do not require full testing include wood and coal stoves, wood-burning fireplaces, and gas fireplaces. However, the Contractor must verify that any wood or coal stoves, wood-burning fireplaces have an unblocked chimney. For gas fireplaces, the Contractor must check gas lines for gas leakage.
- 7.4.12 If for any reason combustion appliance testing was not conducted during the initial audit, which could occur if the homeowner had an audit performed prior to participating in the Power Saver Retrofits Program, the Contractor must still conduct combustion appliance testing for participating homes with combustion appliances before beginning other retrofit projects. In this case, the Contractor can invoice for combustion appliance pre- testing separately from the audit and the cost can be

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included under the \$1,600 Power Saver Retrofit funds or the \$400 homeowner contribution.

- 7.4.13 All combustion appliances must pass combustion testing before any Power Saver Retrofits can be performed in the home. BPI Combustion Safety Test Standards for Vented Appliances (available at <http://www.bpi.org/files/pdf/CombustionSafetyTestProcedure-GoldSheet.pdf>), Potomac Edison Home Performance with ENERGY STAR Procedure-combusting testing standards, and the Be SMART Program combusting testing standards apply to testing methods and pass/fail standards.
- 7.4.14 If the homeowner fails any part of the combustion testing, Power Saver Retrofits may not be performed until the homeowner remedies the problem. The Contractor must make recommendations to the homeowner on how to fix any problems in order to make their combustion appliances pass. The Contractor may work with the homeowner and invoice them separately from the \$1,600 Power Saver Retrofit funds and \$400 homeowner contribution for any work done to remedy the problem that is outside of the Power Saver Retrofits Program for eligible projects. Or, the homeowner may work with another contractor to fix the problems identified. If any appliances fail and work is done to remedy the problem, combustion testing of failed appliances must be performed again by the Contractor and the appliances must pass in order for Power Saver Retrofits to be performed. Combustion re-testing results will not be accepted from another contractor.
- 7.4.15 During combustion testing, the Contractor must:
- 7.4.15.1 **Measure the Base Pressure.** Start with all exterior doors and windows closed and the fireplace damper closed. Set all combustion appliances to the pilot setting or turn off the service disconnect. Combustion appliances include: stove/range, dryer, water heater, furnace, and space heaters. With the home in this configuration, measure and record the baseline pressure of the mechanical room WRT outside.
 - 7.4.15.2 **Establish the Worst Case.** Turn on the dryer and all exhaust fans. Close all interior doors that make the CAZ pressure more negative. Turn on the air handler, if present, and leave it on if the pressure in the CAZ becomes more negative, then recheck the door positions. Measure the net change in pressure from the CAZ to outside, correcting for the base pressure. Record the “worst case depressurization” and compare to the CAZ Depressurization Limit Table.

- 7.4.15.3 **Measure Worst Case Spillage, Draft, CO.** Fire the appliance with the smallest BTU capacity first, test for spillage at the draft diverter with a mirror or smoke test and test for the CO at the flue at steady-state (if steady state is not achieved within 10 minutes, take the CO readings at the 10 minute mark). If the spillage test fails under worst case, go to Step 4 (Measure Spillage, Draft, CO under Natural Conditions). If spillage ends within 1 minute, test the draft in the connector 1' - 2' after the diverter or first elbow. Fire all other connected appliances simultaneously and test the draft diverter of each appliance for spillage. Test for CO in all appliances before the draft diverter.
- 7.4.15.4 **Measure Spillage, Draft, CO under Natural Conditions.** If spillage fails under worst case, turn off the appliance, the exhaust fans, open the interior doors and allow the vent to cool before re-testing. Test for CO, spillage, and draft under "natural conditions." Measure the net change in pressure from worst case to natural in the CAZ to confirm the "worst case depressurization" taken in Step 2 (Establish the Worst Case) outside. Repeat the process for each appliance, allowing the vent to cool between tests.
- 7.4.15.5 **Ambient CO.** Monitor the ambient CO in the breathing zone during the test procedure and abort the test if ambient CO goes over 35 ppm. Turn off the appliance, ventilate the space and evacuate the building. The building may be reentered once ambient CO levels have gone below 35 ppm. The appliance must be repaired and the problem corrected prior to completing the combustion safety diagnostics. If the ambient levels exceed 35 ppm during testing under natural conditions, disable the appliance and instruct the homeowner to have the appliance repaired prior to operating it again.
- 7.4.15.6 **Action Levels.** Make recommendations for repairs based on test results and the Combustion Safety Test Action Level Tables (<http://www.bpi.org/files/pdf/CombustionSafetyTestProcedure-GoldSheet.pdf>).
- 7.4.15.7 Perform any additional tasks required under BPI Combustion Safety Test Standards for Vented Appliances, Potomac Edison Home Performance with ENERGY STAR® Program combustion testing, or Be SMART Program combustion testing.

7.4.16 For Ranges and Ovens, the Contractor must:

- 7.4.16.1 Remove any items/foil in or on oven/range top
7.4.16.2 Make sure self-cleaning features are not activated

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- 7.4.16.3 Test oven in vent sleeve, before dilution air
 - 7.4.16.4 If 100 ppm to 300 ppm as measured -must install a carbon monoxide detector and make recommendation for service to the homeowner.
 - 7.4.16.5 Greater than 300 ppm as measured—the unit must be serviced prior to work. If greater than 300 ppm after servicing, exhaust ventilation must be provided with a capacity of 25 CFM continuous or 100 CFM intermittent.
 - 7.4.16.6 Perform any additional tasks required under BPI Combustion Safety Test Standards for Vented Appliances, Potomac Edison Home Performance with ENERGY STAR® Program combustion testing, or Be SMART Program combustion testing.
- 7.4.17 The Contractor must assess the following health and safety issues:
- 7.4.17.1 Check home for presence of smoke alarms and make recommendations to homeowner if adequate smoke alarms are not present. Home should have at least one alarm per floor level.
 - 7.4.17.2 Check home for CO monitor(s) and make recommendations to homeowner if adequate CO monitor(s) are not present. Home should have at least one monitor per floor level.
 - 7.4.17.3 Inform homeowner of any other health or safety issues noted during audit, such as issues with moisture, drainage, ventilation, or presence of asbestos. If the Contractor determines that repairs are necessary to remedy health or safety issues. The Contractor may not perform any repairs using the \$1,600 in grant funding or the required \$400 homeowner contribution. Any repairs performed must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. The County is not responsible or liable for this repair work.
- 7.4.18 The Contractor must provide education for the homeowner as follows:
- 7.4.18.1 Educate the homeowner about the Potomac Edison Home Performance with ENERGY STAR® Program and the Be SMART Program and the rebates available through these programs.
 - 7.4.18.2 Make sure that the homeowner understands the Power Saver Retrofits process.
 - 7.4.18.3 Educate the homeowner about their current level of energy efficiency and the specific projects that could be done to improve energy efficiency.
- 7.4.19 The following tasks may be completed during a Home Energy Audit, depending on the program under which the audit is being performed (Potomac Edison Home Performance with ENERGY STAR® Program or

the Be SMART Program) and the standard practices of the Contractor within that program:

7.4.19.1 Pre-testing of duct work may be performed as a part of the Home Energy Audit. Alternatively, if it is not considered a part of the standard audit, it can be performed and invoiced separately from the audit. The same specifications apply for either circumstance.

7.4.20.2 The Contractor must perform a visual inspection of duct work that is accessible without deconstructing any portion of the building, assessing for leakage, integrity, and insulation. The Contractor must inspect filters and return air vents for blockage. The Contractor should identify whether the duct is flex or hard duct and determine locations that will need sealing.

7.4.20.3 The Contractor must perform a duct leakage performance test using either a Duct Blaster or a blower door test.

7.4.21 If the Contractor uses a Duct Blaster, he/she will follow these steps:

7.4.21.1 Connect the duct system at the air handler cabinet, or a return grille. After temporarily sealing all remaining registers and grills, the Duct Blaster fan is turned on to force air through all holes and cracks in the ductwork.

7.4.21.2 The fan speed is increased until a standard test pressure is achieved in the duct system. A precise leakage measurement is then made using an airflow and pressure gauge connected to the Duct Blaster system.

7.4.21.3 Estimates of efficiency losses from duct leakage can then be made from the leakage measurements.

7.4.22 If the Contractor uses a blower door test, he/she will compare the whole house results before and after all registers are temporarily sealed. The Contractor may use a hand-held smoke puffer or pressure pan to detect duct leaks while the blower door test is running.

7.4.23 Installation of energy saving devices subsidized by the PE HPwES Program or the Be Smart Program, such as low-flow faucet aerators, low-flow showerheads, or efficient light bulbs. The Contractor should assess which light and water fixtures in the home are used most and prioritize them for replacement.

7.4.24 Low-flow Aerator Installation

Low-flow aerators can be installed as part of the Home Energy Audit or after the audit as an energy efficiency retrofit. Aerators installed as part of the Home Energy Audit will be considered part of the \$100 homeowner fee and cannot be invoiced separately to the homeowner or Frederick County.

Low-flow aerators installed at bathroom sinks must have a maximum flow rate at or less than 1.5 gallons per minute (gpm). Low-flow aerators installed at kitchen sinks must have a maximum flow rate at or less than 2.2 gpm.

7.4.25 Low-flow Showerhead Installation

Low-flow showerheads can be installed as part of the Home Energy Audit or after the audit as an energy efficiency retrofit. Showerheads installed as part of the Home Energy Audit will be considered part of the \$100 homeowner fee and cannot be invoiced separately to the homeowner or Frederick County.

Low-flow showerheads installed must have a maximum flow rate at or less than 2.5 gpm. Showerheads installed may be either aerating or laminar-flow.

7.4.26 Light Bulb Replacement

The most used fixtures in the home should be replaced first. The Contractor should examine the existing light fixtures in the home and determine the wattage and type of bulb to be used. Only fixtures requiring a 40 Watt or greater bulb can be replaced. Because compact fluorescent light (CFL) bulbs are the most cost effective type of efficient lighting, they are the only type of bulb eligible for Power Saver Retrofits funding. The Contractor must use ENERGY STAR® qualified CFLs. Bulbs must be selected that match the requirements of the fixture. For instance, dimmable CFLs should be selected for lights on dimmable switches. CFLs with rounded bulbs should be selected for fixtures in which the lampshade is connected to the bulb. The Contractor should ask homeowner if they have any preferences for light color and accommodate these preferences in bulb selection.

7.4.27 Programmable Thermostat Installation

The Contractor should identify the existing HVAC unit type and identify a programmable thermostat that will work with the unit. The Contractor should assess the homeowner's preference for a 7-day, 5+2-day, or 5-1-1 model, depending on the homeowner's schedule. The programmable thermostat should be installed in place of an old non-programmable thermostat, if applicable. The programmable thermostat should be a model that is compatible with the homeowner's heat and air conditioning system.

The programmable thermostat must be installed according to manufacturer's specifications.

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The Contractor must program the thermostat according to the homeowner's schedule upon completing installation and teach the homeowner how to use it. The homeowner should understand how to adjust their home's temperature and change their programmable thermostat settings when their regular schedule changes.

7.4.28 Carbon Monoxide Detector Installation

Carbon monoxide detectors should only be installed if the home has a combustion appliance or attached garage. Units may be battery operated or plug-in, must meet UL-2034 requirements and be installed to manufacturer's specifications. At least one carbon monoxide detector must be installed if the home currently has no detectors or detectors that are not functioning properly. The Contractor may install a detector on each floor level of the home, if desired by the homeowner.

7.4.29 Hot Water Heater Wrap Installation

The hot water heater should be insulated unless the tank already has a high R-value of insulation. A tank that is warm to the touch should be insulated. The Contractor should install a wrap with at least an R-11 value. Follow all of manufacturer's specifications for product use. Water heaters without pressure relief valves should not be insulated.

For an electric water heater, the Contractor must leave the thermostat access panel uncovered. The thermostat should be set at 120°F. The temperature of an insulated electric water heater must not be set above 130°F in order to prevent overheating of wiring.

For a gas water heater, the Contractor must leave adequate spacing between the insulating wrap and the bottom drain and top flue. Do not obstruct air flow to the burner. Do not cover the thermostat. Do not insulate the top of a gas water heater.

7.4.30 Hot Water Pipe Insulation

The Contractor must insulate at least 6 feet (or to the first elbow) of the cold water pipe. All of the accessible hot water pipe should be insulated.

The Contractor must use quality pipe insulation wrap, pipe sleeves, or neatly taped strips of fiberglass insulation. The wrap or pipe sleeve's inside diameter should be matched to the pipe's outside diameter to ensure a snug fit. If using a pipe sleeve, the seam should be face down on the pipe. Insulation must be secured to the pipe every 1-2 feet using tape, wire, or clamps.

On gas water heaters, insulation must be kept at least 6 inches from the flue. If pipes are within 8 inches of the flue, a fiberglass pipe-wrap (at least 1-inch thick) without a facing should be used to ensure safety. In this case, wire or aluminum foil tape can be used to secure it to the pipe.

7.4.31 Attic Air Sealing

In order to perform attic air sealing, a blower door test must have been performed during the home energy audit and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After attic air sealing is performed, a blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

Attic air sealing must be performed before the installation of attic insulation.

Techniques and materials for air sealing in the attic may differ depending on the home. The Contractor must perform air sealing that reduces heat loss between conditioned and unconditioned space using durable, air-tight materials that can be expected to remain in place for the life of the building. Acceptable materials to use for air sealing in the attic include silicone or acrylic latex caulk, high-temperature silicone caulk, expanding spray foam, and aluminum flashing. All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards.

Air sealing should be performed as necessary in common problem areas, including meeting places of walls with the attic floor, dropped soffits, and behind or under attic knee walls. Air sealing should be performed in areas where there are holes between the conditioned and unconditioned space. These may include electrical, water, chimney, or gas penetrations and venting ducts. Aluminum flashing and high-temperature silicone caulk should be used when sealing around the furnace flue and the chimney.

The Contractor must not air seal over required attic ventilation that is already in place. If the Contractor determines that inadequate ventilation is present in the attic, he/she may not perform any ventilation improvement work using the \$1,600 in grant funding or the required \$400 homeowner contribution. Any ventilation improvement work performed in the attic must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. Frederick County is not responsible or liable for this work.

7.4.32 Basement and/or crawlspace air sealing

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In order to perform basement and crawlspace air sealing, a blower door test must have been performed during the home energy audit and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After basement and crawlspace air sealing is performed, a blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

Basement and crawlspace air sealing must be performed before the installation of basement and crawlspace insulation.

Techniques and materials for air sealing in the basement or crawlspace may differ depending on the home. The Contractor must perform air sealing that reduces heat loss between conditioned and unconditioned space. Acceptable materials to use for air sealing in the basement and crawlspace include silicone or acrylic latex caulk and expanding spray foam. All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards.

Regardless of whether floor or perimeter air sealing is required in the home, air sealing should be performed in the sill plate and rim joist area to restrict infiltration between the building's foundation and wall. The Contractor must seal the top and bottom of the inside of the rim joist cavity and the gap between the sill plate and the foundation.

Air sealing should be performed in areas where there are holes between the conditioned and unconditioned space. These may include electrical, water, or gas penetrations and venting ducts. High-temperature caulk must be used when sealing around the pipe sleeve and metal frame of the furnace flue.

If the Contractor determines that inadequate ventilation is present in the basement or crawlspace, he/she may not perform any ventilation improvement work using the \$1,600 in grant funding or the required \$400 homeowner contribution. Any ventilation improvement work performed in the basement or crawlspace must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. Frederick County is not responsible or liable for this work.

7.4.33 Attic insulation

In order to install attic insulation, a blower door test must have been performed during the home energy audit and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After attic insulation is installed, a

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blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

Attic insulation should only be installed if attic air sealing has occurred first.

Techniques and materials for attic insulation may differ depending on the home. The Contractor must install insulation products that reduce heat loss between conditioned and unconditioned space. All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards. Acceptable types of insulation for the attic include fiberglass or mineral wool batts; foam board insulation; loose fill fiberglass, mineral wool, or cellulose insulation; reflective insulation; or spray foam insulation. If foam board is used, it must be covered with ½-inch of gypsum board or other building-code approved material for fire safety. If spray foam insulation is used, open-cell foam should be used in preference to the more expensive closed-cell foam whenever possible. Closed-cell foam should only be used in applications in which open-cell foam is not appropriate.

The Contractor must determine whether the attic is conditioned or unconditioned and proceed with insulation techniques accordingly.

In the case of an unconditioned attic:

- 7.4.33.1 Attic floor insulation should be installed to reach a level of R-39 or the highest practical level possible. If a faced batt is used, the vapor barrier must be against the floor (faced toward heated area).
- 7.4.33.2 If possible, insulation should be installed over attic pipes so the pipes remain between the insulation and the floor. The Contractor should insulate pipes when it is not possible to insulate over the pipe (see specifications for hot water pipe insulation). Heat ducts should also be between insulation and floors where possible. If they are above floor insulation, they should be sealed and insulated (see specifications for duct sealing and insulation).
- 7.4.33.3 Barriers must be provided around recessed light fixtures, junction boxes, chimneys and flues, and door bell transformers. When a sound chimney with a flue liner exists, an unfaced batt of insulation should be placed as a barrier around the chimney to prevent cellulose insulation from falling into the cavity and making contact with the chimney. If the condition of the

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chimney is in question or if no flue liner exists, the chimney should be repaired (not using \$1,600 Power Saver Retrofits funds or \$400 homeowner contribution) and a barrier should be provided allowing a minimum three inch dead air space around the chimney.

NOTE: The National Electric Code (1978) requires that no insulation be placed within three inches of "recessed light fixtures enclosures, wiring compartments, or ballast and shall not be installed above the fixture as to entrap heat and prevent the free circulation of air". In the case of wiring that is cracked, frayed, deteriorated, or otherwise in question, do not add insulation to this area until the wiring is inspected and repaired by a qualified licensed person (not using \$1,600 Power Saver Retrofits funds or \$400 homeowner contribution).

In the case of a conditioned attic:

- 7.4.34.1 Perimeter insulation should be installed along roof and walls. The Contractor should install insulation that causes the perimeter to reach a level of R-39 or the highest practical level possible. Interior use of perimeter insulation may not be an acceptable alternative where attic areas are finished, where small children use these areas, or where moisture cannot be effectively controlled.
- 7.4.34.2 An attic may contain both conditioned and unconditioned space. In this case, a combination of these methods may be used. The access door between heated and unheated areas must be treated using weather-stripping and insulation at a level of R-39 or the highest practical level possible (see Attic access weather-stripping and insulation).

7.4.35 Vapor and ventilation

The Contractor may install attic baffles over existing soffit vents in order to prevent wind damage to insulation if deemed necessary, as part of the attic insulation eligible project. Attic baffles may only be installed over existing soffit vents in a ventilated attic.

The Contractor must not insulate over required attic ventilation that is already in place. If the Contractor determines that inadequate ventilation is present in the attic, he/she may not perform any ventilation improvement work using the \$1,600 in grant funding or the required \$400 homeowner contribution. Any ventilation improvement work performed in the attic must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. Frederick County is not responsible or liable for this work.

7.4.36 Basement and/or crawlspace insulation

In order to install basement or crawlspace insulation, a blower door test must have been performed during the home energy audit and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After basement or crawlspace insulation is installed, a blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

Basement and crawlspace insulation should only be performed if basement and crawlspace air sealing has occurred first.

Techniques and materials for insulation in the basement or crawlspace may differ depending on the home. The Contractor must install insulation products that reduce heat loss between conditioned and unconditioned space. All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards. Acceptable types of insulation for the basement and crawlspace include fiberglass or mineral wool batts; foam board insulation; loose fill fiberglass, mineral wool, or cellulose insulation; reflective insulation; or spray foam insulation. If foam board is used, it must be covered with ½-inch of gypsum board or other building-code approved material for fire safety. If spray foam insulation is used, open-cell foam should be used in preference to the more expensive closed-cell foam whenever possible. Closed-cell foam should only be used in applications in which open-cell foam is not appropriate.

Regardless of whether the basement or crawlspace is part of the home's conditioned space, insulation should be added in the sill plate and rim joist area to restrict the flow of air from entering the home between the foundation and wall structure and from rising inside the wall cavity.

The Contractor must determine whether the basement or crawlspace is conditioned or unconditioned and proceed with insulation techniques accordingly. Areas where furnaces are located are considered heated and will require perimeter insulation.

In the case of an unconditioned basement or crawlspace:

7.4.36.1 Floor insulation should be installed when practicable in the joist spaces over unheated crawlspaces or unheated basements. Floor insulation should be installed to reach a level of R-19 or the highest practical level possible. Insulation batts should be installed between floor joists butting snugly against the box sill. Contractor should add support for insulation between joists with

bowed wire supports, or other effective material. If a faced batt is used, the vapor barrier must be against the floor (faced toward heated area).

- 7.4.36.2 In order to prevent pipes from freezing, insulation should be installed over the pipes so the pipes remain between the insulation and the floor. The Contractor should insulate pipes when it is not possible to insulate over the pipe (see specifications for hot water pipe insulation). Heat ducts should also be between insulation and floors where possible. If they are below floor insulation, they should be insulated (see specifications for duct sealing).

7.4.37 In the case of a conditioned basement or crawlspace:

- 7.4.37.1 Perimeter insulation should be installed along all foundation walls. Contractor should install insulation that causes the perimeter to reach a level of R-19 or the highest practical level possible. Insulation batts should extend from bottom of floor to ground. Interior use of perimeter insulation may not be an acceptable alternative where basement areas are finished, where small children use these areas, or where moisture cannot be effectively controlled.

- 7.4.37.2 A basement or crawlspace may contain both conditioned and unconditioned space. In this case, a combination of these methods may be used. Any access doors between heated and unheated areas must be treated using weather-stripping and insulation at a level of R-19 or the highest practical level possible (see Basement/crawlspace access weather-stripping and insulation).

7.4.38 Vapor and ventilation

Whether floor or perimeter insulation is installed, all dirt floors must be covered with a four mill polyethylene film held in place with rocks, boards, earth or sand. Be sure to have at least a four inch overlap and fold over. Ground cover should also extend up foundation walls approximately four inches and sealed around foundation.

Most batt insulation has a vapor barrier on it. The vapor barrier should face the heated area. If Contractor determines that a vapor barrier is necessary for either floor or perimeter insulation due to gaps between batts or other circumstances, a four mill polyethylene film should be used. This vapor barrier should be installed facing the warmer side of the floor or wall cavity.

If the Contractor determines that inadequate ventilation is present in the basement or crawlspace, he/she may not perform any ventilation

improvement work using the \$1,600 in grant funding or the required \$400 homeowner contribution. Any ventilation improvement work performed in the basement or crawlspace must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. Frederick County is not responsible or liable for this work.

7.4.39 Attic access weather-stripping and insulation

In order to install attic access weather-stripping and insulation, a blower door test must have been performed and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After attic access weather-stripping and insulation is performed, a blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

If the Contractor determines an attic access must be added in order to perform needed attic retrofits, he/she may not install an access using the \$1,600 in grant funding or the required \$400 homeowner contribution. Addition of an attic access must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. Frederick County is not responsible or liable for this work.

Any access doors between heated and unheated areas leading into or within the attic must be treated using weather-stripping and insulation at a level of R-39 or the highest practical level possible. The sides and top of the access door should equal the surrounding R-value. The same types of insulation materials eligible for use in attic insulation may be used for attic access insulation.

7.4.40 Basement/crawlspace access weather-stripping and insulation

In order to install basement/crawlspace access weather-stripping and insulation, a blower door test must have been performed and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After basement/crawlspace access weather-stripping and insulation is performed, a blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

If the Contractor determines that a basement/crawlspace access must be added in order to perform needed basement/crawlspace retrofits, he/she may not install an access using the \$1,600 in grant funding or the required \$400 homeowner contribution. Addition of a basement/crawlspace access must be negotiated and paid for by the homeowner beyond the \$400 homeowner contribution. Frederick County is not responsible or liable for this work.

Any access doors between heated and unheated areas leading into or within the basement/crawlspace must be treated using weather-stripping and insulation at a level of R-19 or the highest practical level possible. The access door should equal the surrounding R-value. The same types of insulation materials eligible for use in basement/crawlspace insulation may be used for basement/crawlspace access insulation.

7.4.41 Caulking and/or weather-stripping of windows and doors

In order to perform window and door air sealing, a blower door test must have been performed and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After window and door caulking and/or weather-stripping is performed, a blower door test and post-combustion test (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

Techniques and materials for weatherizing windows and doors may differ depending on the home. All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards. Acceptable materials include weather-stripping, silicone or acrylic latex caulk, and expanding spray foam.

7.4.42 Duct sealing and insulation

In order to seal and insulate duct work, duct testing (see duct testing specifications) must have been performed and combustion appliances (if any exist in the home) must have passed the pre-combustion test (see home energy audit specifications). After duct sealing is performed, post-duct testing and post-combustion testing (if any combustion appliances exist in the home) must be performed as part of the test out (see test-out specifications).

All materials must be installed in accordance with applicable codes, regulations, manufacturers' specifications and recommendations and in accordance with generally accepted industry standards. Acceptable materials for sealing and insulating duct work include duct sealant (mastic), metal-backed foil tape, expanding spray foam (for penetrations through floors and ceilings), and duct insulation material rated at least R-6.

Leaking duct work should have been identified during the energy audit and/or duct testing. All ducts that pass through unconditioned space in the home and that are accessible without deconstructing portions of the building should be sealed and insulated to reach a level of R-6 or the

highest practical level possible. All insulation joints must be taped or sealed to prevent separation or heat loss, ideally using mastic sealant.

7.4.43 Test Out: Post combustion testing

Post-combustion testing must be performed if any projects were completed that aim to tighten the home envelope. Post-combustion testing procedures and requirements are the same as the pre-combustion testing procedures described in the Home Energy Audit section. All combustion appliances must pass combustion testing. If any combustion appliances do not pass combustion testing, the Contractor must notify the EEAP Coordinator and work to remedy the situation in order to allow them to pass. If the test failure is a result of the contractor's retrofit work, the Contractor cannot invoice the homeowner for their \$400 contribution or Frederick County for \$1,600 Power Saver Retrofit funds until all combustion appliances have passed the post-test. EEAP Coordinator should be consulted for guidance in this situation.

7.4.44 Test Out: Post duct testing

Post-duct testing must be performed if duct sealing and insulation was performed. Post-duct testing procedures and requirements are the same as the pre-duct testing procedures described in the Home Energy Audit section. Post-duct testing results must indicate that the ducts have been made air tight. If testing results show that duct sealing and insulation has not improved the tightness of ductwork, the Contractor must remedy the situation in order to improve duct tightness. The Contractor cannot invoice the homeowner for their \$400 contribution or Frederick County for \$1,600 Power Saver Retrofit funds until they have demonstrated that duct work has been tightened.

7.4.45 Test Out: Post blower door test

The post blower door test must be performed if any projects were completed that aim to tighten the home envelope. Post blower door test procedures and requirements are the same as the pre-blower door test procedures described in the Home Energy Audit section. Post blower door test results must indicate that the home envelope has been tightened. If testing results show that air sealing or insulation work performed has not improved the tightness of the home, the Contractor must remedy the situation in order to improve home tightness. If the home has been tightened to an unsafe level that falls significantly below the home's Building Airflow Standard, the Contractor must remedy the situation. The Contractor cannot invoice the homeowner for their \$400 contribution or Frederick County for \$1,600 Power Saver Retrofit funds until they have demonstrated that the home has been tightened to a safe level.

8 SUBMISSION OF PROPOSAL DOCUMENTS:

Contractors are required to complete and return the following documents with their proposals:

8.1 Technical Proposal:

Attachment 2 (Technical Proposal Signature Cover Page),
Attachment 3 (Contractor's Reference Information)
Attachment 4 (Notice to Offerors/Contractors),
Attachment 5 (Affidavit),
Attachment 6 (Certification of Compliance)

Failure to return required documents may be cause for rejection of proposal.

Contractors are required to provide the following information in their Technical Proposal:

- 8.1.1 Demonstration of at least 3 years of experience providing energy efficiency auditing and retrofit services similar to those described in this RFP
- 8.1.2 Evidence of MHIC license and BPI certification
- 8.1.3 An overview of the Contractor's experience rendering services similar to those described in this RFP and how that experience is relative to this project. The narrative should also include a summary of the experience of key personnel proposed to be assigned to this project.
- 8.1.4 A brief description of how the Contractor and any subcontractors used will work in full compliance with ARRA Special Terms and Conditions.
- 8.1.5 The Contractor must provide a work plan presenting how the services in this RFP shall be provided if the Contractor is awarded the contract, including:
 - 8.1.5.1 Understanding of the services to be provided
 - 8.1.5.2 Approach to managing the overall project, including project organization, support resources, and project reporting
 - 8.1.5.3 Tasks and methods to be utilized in completing the required services described in this RFP
 - 8.1.5.4 Schedule of events and activities required for the Contractor to complete the services outlined in this RFP according to the deadlines established by the RFP
 - 8.1.5.5 Description of the Contractor's procedure for assuring quality control, time and cost control, and meeting deadline

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- 8.1.5.6 Full description of all subcontractors included as part of the proposal and their role in the project compared to the Contractor's role, including a brief discussion of the interrelationship between the Contractor and any subcontractors for completing the work described in this RFP. The County reserves the right to reject the Contractor's choice of subcontractors.
- 8.1.6 Estimated time frame and schedule to audit and complete retrofits for one home and an estimate of the total number of housing units the Contractor can complete monthly for the work described.
- 8.1.7 The Contractor must provide a staffing plan that describes the Contractor's team and identifies the specific individuals who will perform the required services as outlined in the RFP. The staffing plan should include a description of the division of responsibility envisioned among these individuals and a list of relevant experience and certifications for each key individual.
- 8.1.8 Sample project plan worksheet.
- 8.1.9 A copy of the Contractor's standard homeowner contract.
- 8.2 References:
 - 8.2.1 The Contractor shall provide a list of three current clients or clients from the past three years for whom the Contractor is currently providing the services described herein, including the name, address, telephone number, and email address of a person who can be contacted to verify the information.
 - 8.2.2 The Contractor shall provide a list of all contracts with any entity of the State of Maryland that the Contractor is performing or has performed within the past five years. Frederick County reserves the right to contact any known current or former state client. For each contract, the Contractor must provide:
 - 8.2.2.1 The State contracting entity
 - 8.2.2.2 A brief description of the services/goods provided
 - 8.2.2.3 The dollar value of the contract
 - 8.2.2.4 The term of the contract
 - 8.2.2.5 The State employee contact person (name, title, telephone number, and email address)
 - 8.2.2.6 Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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- 8.3 Documentation proving financial ability to support the required monthly workload such as:
- 8.3.1 Financial rating.
 - 8.3.2 Successful financial track record.
- 8.4 Price Proposal:
- Attachment 7 (Price Proposal Page),
- 8.4.1 In submitting its Price Proposal, each Contractor shall propose a schedule of rates for the services to be performed during the term of the contract in the Price Proposal Cover Page included as Attachment 7 to this RFP.
- 8.5 Contractor's proposal shall be presented in the order specified in above to assure a uniform review process and obtain the maximum degree of comparability. Proposals should be prepared simply and economically, providing a straightforward, concise description of the offer and all required information. They should be printed on recycled paper and duplexed if possible; staples, clips or rubber bands are preferred to ring binders, and unnecessarily elaborate brochures or other expensive visual presentations are neither necessary nor desired. Each page of the proposal should be consecutively numbered.
- 8.6 Contractors shall submit one (1) original, clearly marked as such, and five (5) copies of the complete proposal. The cost of preparing proposals is the responsibility of Contractors. The County may not photocopy proposal documents for the purpose of complying with this provision requiring a pre-determined number of duplicate copies. Failure to provide the required number of complete duplicate copies may result in rejection of your proposal.
- 8.7 Each proposal must show the full business address and telephone number of the firm, company or corporation and be signed by the person or persons legally authorized to sign the contract. All correspondence concerning the proposal and contract, including notice of award, copy of contract and purchase order, will be mailed or delivered to the address shown on the proposal in the absence of written instructions for the Contractor to the contrary. Proposals by a partnership must be signed in the partnership's name by one of the members of the partnership or by an authorized representative followed by the signature and designation of the person signing, who must also state the names of the individuals composing the partnership. Proposals by corporations must contain the signature and designation of the officer having authority to sign. When requested, satisfactory evidence of authority of the officer signing in behalf of the corporation must be furnished. Anyone signing the proposal as agent must file satisfactory evidence of his authority to do so.

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- 8.8 Proposals must be securely sealed and addressed to the Frederick County Department of Procurement and Contracting, 12 East Church Street – First Floor, Frederick, MD 21701 by the date and time specified.
- 8.9 Technical and price proposals are to be mailed together in one package, but the Technical and Price Proposals must be bound separately. There shall be no reference to the price of products and services in the Technical Proposal. Proposals may be either mailed or hand-delivered. If proposals are sent by mail or commercial express services, the Contractor shall be responsible for actual delivery of the proposal to the Frederick County Department of Procurement and Contracting before the deadline.
- 8.10 Timely proposals become the property of the County. Late proposals will not be considered and will be returned unopened.
- 8.11 The submission of a proposal on this Request for Proposals will be considered as a representation that the Contractor: (1) has carefully investigated all conditions which affect or may, at some future date, affect the performance of the services covered by the proposal; (2) is familiar with the entire area to be serviced as described in the specifications; (3) has carefully reviewed all contract documents; (4) is fully informed concerning the conditions to be encountered, character, quality and quantity of work to be performed and materials to be furnished; and (5) is familiar with all federal, state and local laws, all codes and ordinances of the County that in any way affect the prosecution of the work or persons engaged or employed in the work.

9 EVALUATION OF OFFERS:

- 9.1 The County intends to make award to the responsible Contractor whose proposal represents the best value to the County. Proposals will be evaluated based on the technical and price submittals and if deemed necessary by the County, on oral discussions held with the Contractors.
- 9.2 Proposals will be evaluated in two phases; the first based on the technical and price submittals and the second, if deemed necessary, on oral discussions. The first phase will be evaluated based on the following criteria listed in order of importance.
 - 9.2.1 Demonstrated understanding of the County's requirements as specified in the RFP.
 - 9.2.2 Demonstrated experience in performing similar projects in size and nature.
 - 9.2.3 Proposed work plan and timeline for completing the required services by the specified deadlines.

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- 9.2.4 Qualifications and technical competence of the Contractor, proposed staff, including all subcontractor(s), if applicable.
 - 9.2.5 Procedures for quality of work control of costs and ability to meet schedules.
 - 9.2.6 Proposed methodology to ensure services are performed in a cost-effective manner.
 - 9.2.7 Price.
 - 9.3 After identifying the short list of the most qualified Contractor(s) based on the evaluation criteria, representative(s) may be required to clarify their proposals by making individual presentations to the evaluation committee.
 - 9.4 The County may enter into negotiations with Contractors and invite best and final offers as deemed to be in the best interest of the County. Negotiations may be in the form of face-to-face, telephone, facsimile, e-mail or written communications, or any combination thereof, at the County's sole discretion.
 - 9.5 Contractors are strongly advised not to prepare their proposal submissions based on any assumption or understanding that negotiations will take place. Contractors are advised to respond to this Request for Proposals fully and with forthrightness at the time of proposal submission.
 - 9.6 Following the submittal of proposals, Contractors are strongly cautioned not to contact elected officials or members of the evaluation committee regarding the selection process. Inappropriate efforts to lobby or influence individuals or Contractors involved in this selection may result in dismissal from further consideration, at the County's sole discretion.
- 10 BILLING AND PAYMENT: Invoices shall be submitted monthly in duplicate for all services performed during the preceding month to:

Frederick County Government
Attn: Nicole Robinson
Energy Efficiency Access Project Coordinator
30 North Market Street
Frederick, MD 21701

- 10.1 Each invoice shall include the following information:

Federal Employer Identification Number (FEIN);
Contractor's name and address;
Name of Using Department;
Frederick County Contract Number;

Service item(s) performed and applicable remarks;
Date and length of time of each service performed;
Name of individual(s) performing the required services;

11 INSURANCE REQUIREMENTS:

The Contractor shall purchase and maintain, during the entire term of the contract, including any renewals thereof, the following policies of insurance acceptable to the County:

11.1 Automobile Liability insurance with minimum limits of:

- 11.1.1 \$1,000,000 combined single limit;
- 11.1.2 \$1,000,000 each person;
- 11.1.3 \$1,000,000 each accident;
- 11.1.4 \$1,000,000 property damage

11.2 General Liability insurance with minimum limits of:

- 11.2.1 \$1,000,000 per occurrence;
- 11.2.2 \$2,000,000 General Aggregate;
- 11.2.3 \$2,000,000 Prod/CO Aggregate;
- 11.2.4 \$1,000,000 Personal/Advertising Injury;
- 11.2.5 \$1,000,000 per occurrence;
- 11.2.6 \$ 50,000 Fire Damage Legal Liability and
- 11.2.7 \$ 5,000 Medical Expense.

11.3 General Liability insurance must cover:

- 11.3.1 Premises/Operations;
- 11.3.2 Products/Completed Operations;
- 11.3.3 Contractual Liability;
- 11.3.4 Independent Contractors;
- 11.3.5 Broad Form Property Damage and
- 11.3.6 Personal/Advertising Injury.

The General Liability insurance policy must include the Board of County Commissioners of Frederick County, Maryland as Additional Insured and must include a Waiver of Subrogation. If General Liability policy has a Self-Insured Retention or Deductible greater than \$1,000 you will be required to submit audited financial statements for review.

11.4 Professional Liability/Errors & Omissions coverage with minimum limits of:

- 11.4.1 \$1,000,000 per Occurrence and
- 11.4.2 \$2,000,000 Aggregate.

Professional Liability must indicate if it provides Occurrence or Claims Made coverage.

If Professional Liability coverage is written on a Claims Made form, coverage must be maintained for a minimum of 3 years after completion of contract or "tail" coverage must be purchased.

If Professional Liability policy has a Self-Insured Retention or Deductible greater than \$25,000 you will be required to submit audited financial statements for review.

11.5 Workers' Compensation coverage with minimum statutory limits.

Out of state employers must show evidence of coverage in Maryland by listing Maryland as a covered state and not rely on "other states" coverage. On a Standard Workers' Compensation policy this is typically established in Section 3A of the Declarations Page. A copy of the Declarations Page showing evidence of coverage must be provided.

11.6 Employers Liability coverage with minimum limits of:

- 11.6.1 \$100,000 per Accident;
- 11.6.2 \$100,000 per Employee and
- 11.6.3 \$500,000 per Policy.

11.7 Certificates must have the following phrases struck from the Cancellation text:

- 11.7.1 "endeavor to" and
- 11.7.2 "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

11.8 CERTIFICATE HOLDER must be:

Board of County Commissioners of Frederick County, Maryland
12 East Church Street
Frederick, Maryland 21701

11.9 If any primary policy's limits fall short of the requirements, be sure to include on the certificate any excess policies that would extend these limits.

11.10 Any insurance written on a Claims Made form must indicate retro date.

11.11 All policies requiring **Additional Insured or **Waiver of Subrogation** wording MUST be accompanied by the corresponding endorsements – blanket endorsements are acceptable.**

11.12 All of the above insurance coverage's must be written by a carrier with a

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minimum A.M. Best rating of A- or better AND a financial size classification of VI or higher. All policies of insurance shall be underwritten by companies licensed to do business in the State of Maryland and all certificates must include an authorized signature. Any deductibles or self-insured retentions should be noted on the certificate.

- 11.13 If applicable, the Contractor shall assure that all subcontractors performing services in accordance with this solicitation carry identical insurance coverage as required of the contract, either individually or as an Additional Insured on the policies of the Contractor. Exceptions may be made only with the approval of the County. Contractor shall indemnify the County for any uninsured losses relating to contractual services involving subcontractors, including workers' compensation claims.
- 11.14 The Contractor shall not commence work under the contract until evidence of all required coverage is received by the County. All certificates must include an authorized signature and provide for at least 30 days notice of cancellation. Further, the Contractor shall not reduce or cancel or change any of the required coverage's without thirty (30) days notice of such change to the County.
- 11.15 The Contractor will not hold the County liable for any injuries to the employees, servants, agents, subcontractors or assignees of the contract arising out of or during the course of services relating to this agreement.
- 11.16 The providing of any insurance required herein does not relieve the Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded or for which the Contractor may be liable by law or otherwise.
- 11.17 Failure to provide and continue in force such insurance as required above shall be deemed a material breach of the contract and shall operate as an immediate termination thereof.

ATTACHMENT 1

FREDERICK COUNTY CONTRACT

CONTRACT SERVICES AGREEMENT

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this _____ day of _____, 2012, by and between the Board of County Commissioners of Frederick County, a body corporate and politic of the State of Maryland, (herein "County") and, _____ (herein "Contractor"). (The term Contractor includes professionals performing in a consulting capacity.) The parties hereto agree as follows:

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the County entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal. The Scope of Service shall include the Contractor's proposal or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the County and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless County against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against County hereunder.

1.5 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the County of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, Plan, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by County, except such losses or damages as may be caused by County's sole negligence.

1.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services. County shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of (*input contract sum in words*) Dollars, (\$ *Insert contract sum in figures*) (herein "Contract Sum"), except as provided in Section 1.8. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, but not exceeding the Contract

Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the County; Contractor shall not be entitled to any additional compensation for attending said meetings. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation therefore, and the provisions of Section 1.8 shall not be applicable for such services.

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first (1st) working day of such month, Contractor shall submit to the County in the form approved by the County's Director of Finance, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.3, County shall pay Contractor for all expenses stated thereon which are approved by County pursuant to this Agreement no later than the last working day of the month.

3.0 PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the County, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. In no event shall Contractor be entitled to recover damages against the County for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

4.0 COORDINATION OF WORK

4.1 Representative of Contractor. The following principal(s) of Contractor are hereby designated as being the principal(s) and representative(s) of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

(input key Contractor representative(s))

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal(s) were a substantial inducement for County to enter into this Agreement. Therefore, the foregoing principal(s) shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principal(s) may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of County.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the Director of Procurement and Contracting of Frederick County. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions that must be made by County to the Contract Officer. Unless otherwise specified herein, any approval of County required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the County required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the County to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the County. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of County. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of County.

4.4 Independent Contractor. Neither the County nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or

employees, perform the services required herein, except as otherwise set forth herein. County shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of County and shall remain at all times as to County a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of County. County shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

5.0 INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to County, during the entire term of this Agreement including any extension thereof, the policies of insurance as set forth in Exhibit "E", attached hereto and incorporated by reference.

All of the above policies of insurance required in Exhibit "B" shall be primary insurance. The insurer shall waive all rights of subrogation and contribution it may have against the County, its officers, employees and agents, and their respective insurers. In the event any of said policies of insurance are canceled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the County with Certificates of Insurance, endorsements or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance, endorsements, or binders are approved by the County.

The contractor agrees that the provisions of this Section 5.1 shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or person for which the **Contractor is otherwise responsible**.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.3 of this Agreement the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section.

5.2 Indemnification. Contractor agrees to indemnify the County, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the acts or omissions of Contractor hereunder, or arising from Contractor's performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities arising from the sole negligence or

willful misconduct of the County, its officers, agents or employees, who are directly responsible to the County, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the County, its officers, agents or employees resulting from any of the above claims or liabilities subject to Contractor's indemnification obligation ; and

(c) In the event the County, its officers, agents or employees are made a party to any action or proceeding filed or prosecuted against Contractor arising from the above claims or liabilities subject to Contractor's indemnification obligation, Contractor shall pay to the County, its officers, agents or employees, any and all costs and expenses incurred by the County, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

5.3 Performance Bond. Concurrently with execution of this Agreement, Contractor shall deliver to County a performance bond in the sum of the amount of this Agreement, in the form provided by the County, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

6.0 REPORTS AND RECORDS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the County is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.2 Records. Contractor shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of County, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following

completion of the services hereunder, and the County shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of County and shall be delivered to County upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by County of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to County of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify County for all damages resulting therefrom.

6.4 Release of Documents. The drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.0 ENFORCEMENT OF AGREEMENT

7.1 Maryland Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of Maryland. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Circuit Court of Frederick County, State of Maryland, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Disputes. In the event of a dispute between the parties to this contract involving \$10,000.00 or more regarding the terms of the contract or performance under the contract, the question involved in the dispute shall be subject to a determination of questions of fact by an officer or official body of the County selected by the County Manager, in his sole discretion, who may include but is not limited to any of the Directors of Frederick County Government's Divisions of Public Works, Utilities and Solid Waste Management or Finance. The decisions of an officer or official body of the County selected by the County Manager to resolve this dispute are subject to review on the record by the Circuit Court of Frederick County.

A dispute between the parties to this contract involving less than \$10,000.00 regarding the terms of the contract or performance under the contract shall be determined by an officer or official body of the County selected by the County Manager, in his sole discretion, who may include but is not limited to any of the Directors of Frederick County Government's Divisions of Public Works, Utilities and Solid Waste Management or Finance. The decision of an officer or official body of the County selected by the County Manager to resolve this dispute shall be final and binding on the parties to the dispute, and conclusive of the issue.

Request for Proposals No. 13-09

The only parties to any proceeding to determine a dispute shall be the contractor and the County, unless the contractor and County otherwise agree to allow additional parties.

Unless otherwise agreed, the contractor shall carry on the work and maintain its progress during any dispute proceedings as if no dispute had occurred, and the County shall continue to make payments to the contractor in accordance with the contract documents for items not subject to the dispute.

Nothing herein shall limit County's right to terminate this Agreement without cause pursuant to Section 7.8.

7.3 Retention of Funds. Contractor hereby authorizes County to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate County for any losses, costs, liabilities, or damages suffered by County, and (ii) all amounts for which County may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, County may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of County to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect County as elsewhere provided herein.

7.4 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action. Except with respect to disputes that are subject to Section 7.2 of this Agreement, either party may take such legal action, in law or in equity, to recover damages for any material default in a party's failure to perform this Agreement, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief in the event of a party's failure to perform this Agreement, or to obtain any other remedy consistent with the purposes of this Section.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine

in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the County the sum of (*input LD amount, if any*) _____ (\$_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The County may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration Of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The County reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. The Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event of termination without cause pursuant to this Section, the County need not provide the Contractor with the opportunity to cure pursuant to Section 7.3.

7.9 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, County may take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the County shall use reasonable efforts to mitigate such damages), and County may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the County as previously stated.

7.10 Termination for Non-appropriation. If the County or other funding source fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period or part thereof of this Agreement, this Agreement shall be cancelled automatically as of the beginning of the fiscal year or part thereof for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's rights or the Contractor's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Contractor and the County from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The County shall make a good faith effort to notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period or part thereof beyond the first fiscal year.

8.0 COUNTY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

Request for Proposals No. 13-09

8.1 Non-liability of County Officers and Employees. No officer or employee of the County shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the County or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. No officer or employee of the County shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally sent by prepaid, first-class mail, sent by facsimile or sent by email as follows:

11.17.1.1 in the case of the County, to:

Sylvia Jacobs, CPPO, CPPB
Project Manager IV
Procurement and Contracting

Department

12 East Church Street
Winchester Hall
Frederick, Maryland 21701
Office Phone: 301-600-6804
Fax: 301-600-2521
E-mail: sjacobs@frederickcountymd.gov

With a copy to:

Contracting

Director of Procurement and Contracting
12 East Church Street

Frederick, MD 21701

(b) in the case of the Contractor, to:

(input Name, title, address and contact info)

Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

(SIGNATURES ON NEXT PAGES)

Request for Proposals No. 13-09

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

**Board of County Commissioners of
Frederick County, MD**
a body corporate and politic of the State of
Maryland

By: _____

By: _____

Blaine R. Young , President
Board of County Commissioners

CONTRACTOR: (input Contractor name)

(Contractor address)

(Contractor address)

(Contractor address)

Check one: ☐ Individual ☐ Partnership ☐ Corporation

By: _____

Signature of Authorized Representative
(notarized)

Name: _____

Title: _____

Address: _____

State of _____}

County of _____}ss

On _____ before _____ me,
_____ personally
appeared _____

personally known to me (or proved to me on
the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged
to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and
that by his/her/their signature(s) on the
instrument the person(s), or the entity upon
behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Notary

Signature: _____

Notary Seal:

sample

**EXHIBIT “A”
SCOPE OF SERVICES**

sample

**EXHIBIT “B”
SPECIAL REQUIREMENTS**

sample

**EXHIBIT “C”
SCHEDULE OF COMPENSATION**

sample

**EXHIBIT “D”
SCHEDULE OF PERFORMANCE**

sample

EXHIBIT "E"
Insurance

The Contractor shall purchase and maintain, during the entire term of the contract, including any renewals thereof, the following policies of insurance acceptable to the County:

Auto Liability insurance with minimum limits of:

\$1,000,000 Combined Single Limit or
\$1,000,000 each Person,
\$1,000,000 each Accident and
\$1,000,000 Property Damage

General Liability insurance with minimum limits of:

\$1,000,000 per occurrence,
\$2,000,000 General Aggregate,
\$2,000,000 Prod/CO Aggregate,
\$1,000,000 Personal/Advertising Injury,
\$ 50,000 Fire Damage Legal Liability and
\$ 5,000 Medical Expense.

General Liability insurance must cover:

Premises/Operations,
Products/Completed Operations,
Contractual Liability,
Independent Contractors,
Broad Form Property Damage and
Personal/Advertising Injury.

The General Liability insurance policy must include the Board of County Commissioners of Frederick County, Maryland as Additional Insured and must include a Waiver of Subrogation.

Workers' Compensation coverage with minimum statutory limits.

Employers Liability coverage with minimum limits of:

\$100,000 per Accident,
\$100,000 per Employee and
\$500,000 per Policy.

Certificates must have the following phrases struck from the Cancellation text:

"endeavor to" and

'but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives'.

CERTIFICATE HOLDER needs to be:

Board of County Commissioners of Frederick County, Maryland
12 East Church Street
Frederick, Maryland 21701

If any primary policy's limits fall short of the requirements, be sure to include on the certificate any excess policies that would extend these limits.

All of the above insurance coverages must be written by a carrier with a minimum A.M. Best rating of A- or better AND a financial size classification of VI or higher. All policies of insurance shall be underwritten by companies licensed to do business in the State of Maryland and all certificates must include an authorized signature. Any deductibles or self-insured retentions should be noted on the certificate.

If applicable, the Contractor shall assure that all subcontractors performing services in accordance with this solicitation carry identical insurance coverage as required of the contract, either individually or as an Additional Insured on the policies of the Contractor. Exceptions may be made only with the approval of the County. Contractor shall indemnify the County for any uninsured losses relating to contractual services involving subcontractors, including workers' compensation claims.

The Contractor shall not commence work under the contract until evidence of all required coverage is received by the County. Further, the Contractor shall not reduce or cancel or change any of the required coverage's without thirty (30) days notice of such change to the County.

The Contractor will not hold the County liable for any injuries to the employees, servants, agents, subcontractors or assignees of the contract arising out of or during the course of services relating to this agreement.

The providing of any insurance required herein does not relieve the Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded or for which the Contractor may be liable by law or otherwise.

Failure to provide and continue in force such insurance as required above shall be deemed a material breach of the contract and shall operate as an immediate termination thereof.

ATTACHMENT 2

TECHNICAL PROPOSAL SIGNATURE COVER PAGE

TITLE: **Energy Efficiency Access**

OPENING: _____ TIME: _____

TO: FREDERICK COUNTY PROCUREMENT AND CONTRACTING DEPARTMENT PROCUREMENT
AND CONTRACTING

12 East Church Street – First Floor
Frederick, MD 21701

The undersigned agrees to furnish and deliver the above goods and/or services in accordance with the specifications issued for same, and subject to all terms, conditions, and requirements in the Request for Proposals, and in the various proposal documents:

COMPANY NAME: _____

FEDERAL TAX IDENTIFICATION NO./SOCIAL SECURITY NO.: _____

ADDRESS: _____

(City) (State) (Zip Code)

TELEPHONE _____

FAX: _____

E-MAIL ADDRESS _____

Payment Terms: _____ F.O.B. Destination, Inside Delivery

Frederick County is exempt from all local, state, and federal taxes, and prices stipulated by the Contractor are considered maximum and are not subject to any increase due to any taxes, or any other reason. The County's Tax Exemption number is

[] We wish to submit a "NO PROPOSAL" at this time, but request that our company remain on your bidders list for future solicitations.

SIGNATURE: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

ATTACHMENT3

VENDOR'S REFERENCE INFORMATION

Name of Company: _____

The above Company has been in business at present location for ____ years.

1. References: Provide the name, address, telephone number and email address of at least three entities for which the Vendor has provided similar services for other public governments or organizations during the past ten years, including City, County or State governments, if applicable.

1.1 Entity Name:	Contract Dates:
_____	_____
Contact's Title	Telephone Number:
_____	_____
Address:	Email Address:
_____	_____

Services Provided:	_____

1.2 Entity Name:	Contract Dates:
_____	_____
Contact's Title	Telephone Number:
_____	_____
Address:	Email Address:
_____	_____

Services Provided:	_____

1.3 Entity Name:	Contract Dates:
_____	_____
Contact's Title	Telephone Number:
_____	_____
Address:	Email Address:
_____	_____

Services Provided:	_____

ATTACHMENT 4

**FREDERICK COUNTY GOVERNMENT
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of Frederick County proposals/solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this contract, please fax this completed form to: (301) 694-2521 to the attention of Procurement and Contracting Director

Title: _____

Project No: _____

1. If you have responded with a "no bid", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ **The subject of the solicitation is not something we ordinarily provide.**
- ☐ **We are inexperienced in the work/commodities required.**
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with Frederick County Government is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the bid/proposals is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE requirements. (Explain in REMARKS section.)
- ☐ Prior Frederick County contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: _____

2. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

_____ Offer

or Name: _____ Date _____

Contact Person: _____ Phone (____)

Address: _____

ATTACHMENT 5

AFFIDAVIT

(Must be completed, signed, and submitted with the proposal.)

Contractor _____

Address _____

Telephone _____ Proposal Number _____

I, _____, the undersigned, _____ of the above named
(Print Signer's Name) (Print Office Held)

Contractor does declare and affirm this _____ day of _____, _____, that I hold the aforementioned office
(Month) (Year)
in the above named Contractor and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Frederick County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Frederick County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Frederick County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 16 of Article 49B of the Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

DATE

SIGNATURE

PRINTED NAME

ATTACHMENT 6

CERTIFICATION OF COMPLIANCE
With Frederick County Purchasing Regulation 1-2-36,
Hiring of Illegal Aliens Prohibited for Performance of County Work

I, _____, hereby certify or attest that:
(Name)

1. I am the owner or authorized representative of _____;
(Name of Firm)
2. In compliance with Frederick County Purchasing Regulation 1-2-36, and as a contractual requirement of doing business with Frederick County Government, my firm and all of my firm's subcontractors shall only employ individuals legally authorized to work within the United States of America and within Frederick County, Maryland in the performance of work under this contract.;
3. Compliance with Frederick County Purchasing Regulation 1-2-36 is a material contractual obligation and that breach of this obligation could result in contract termination in addition to, and not in lieu of, any and all other remedies available to Frederick County Government and any and all other damages for which my firm might be liable; and
4. Nothing within Frederick County Purchasing Regulations requires Frederick County Government to elect to terminate a contract for default to the exclusion of any other remedy.

By my signature below, I swear or affirm under penalties of perjury that the contents of this Certification of Compliance are true to the best of my knowledge, information and belief.

(Signature)

(Date)

Print Name of Signatory: _____

Print Title of Signatory: _____

Employer Name: _____

Employer Address: _____

**ATTACHMENT 7
PRICE PROPOSAL**

Allowances:

Contractor will receive an allowance for the following item:

Home Energy Audit	\$100	(cost/unit)
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The homeowner will be invoiced for the \$100 Home Energy Audit cost at the time of audit which will count towards the total \$400 homeowner contribution. The \$100 energy audit fee is subject to programmatic changes made by Potomac Edison Home Performance with Energy Star and Be SMART Home Energy Efficiency Rebate Program.

Unit Prices:

Contractor's proposal must include a detailed price using the table below and shall guarantee the pricing through the contract term ending April 30, 2013). The Materials Price below should include only material costs. The Labor Price below should include time and staff required to complete tasks, overhead, administrative costs, profit and other labor-related costs. The Total Unit Price is a sum of the Materials Price and Labor Price per item listed.

Eligible Project	Materials Price	Labor Price	Total Unit Price	Unit
Pre-Combustion Testing (if not included in Audit)				(cost/unit)
Pre-Duct Testing (if not included in Audit)				(cost/unit)
Low-flow Aerator Installation				(cost/unit)
Low-flow Showerhead Installation				(cost/unit)
Light Bulb Replacement				(cost/unit)
Programmable Thermostat Installation				(cost/unit)
Carbon Monoxide Detector Installation				(cost/unit)
Hot Water Heater Wrap Installation				(cost/unit)
Hot Water Pipe Insulation				(cost/unit)
Attic Air Sealing				(cost/sf)
Basement/Crawlspace Air Sealing				(cost/sf)
Attic Insulation				(cost/ft ³)
Basement/Crawlspace Insulation				(cost/ft ³)
Attic Access Weatherstripping and Insulation				(cost/unit)
Basement/Crawlspace Access Weatherstripping and Insulation				(cost/unit)
Caulking and Weatherstripping of Windows and Doors				(cost/sf)
Duct Sealing and Insulation				(cost/sf)
Test Out: Post Combustion Testing				(cost/unit)
Test Out: Post Duct Testing				(cost/unit)
Test Out: Post Blower Door Test				(cost/unit)

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The price per cubic foot of Attic Insulation and Basement/Crawlspace Insulation should be based on unsettled (bagged) cubic feet as applicable. The price for Attic Air Sealing, Basement/Crawlspace Air Sealing, Caulking and Weatherstripping of Windows and Doors, and Duct Sealing and Insulation shall be in terms of dollars per square feet of conditioned space in the home.

Base Bids

The lowest bid price will be determined based on the estimates detailed below. The work under this contract is to perform home energy audits and energy efficiency retrofits in up to 85 Frederick County homes. If qualifying proposals are received, two contracts will be awarded and the two contractors will each be assigned a portion of the 85 homes on a rotating basis. Estimates below for a single contractor's work are based on equal sharing of the 85 home assignments and estimates of total number of projects to be completed. Actual work performed by selected contractors may differ from these estimates.

Task	Total Unit Cost	Unit	Qty	Total (Unit Cost x Qty)
Home Energy Audit	\$100	(cost/unit)	43	\$4,300
Pre-Combustion Testing (if not included in Audit)		(cost/unit)	10	
Pre- Duct Testing (if not included in Audit)		(cost/unit)	10	
Low-flow Aerator Installation		(cost/unit)	86	
Low-flow Showerhead Installation		(cost/unit)	86	
Light Bulb Replacement		(cost/unit)	215	
Programmable Thermostat Installation		(cost/unit)	21	
Carbon Monoxide Detector Installation		(cost/unit)	21	
Hot Water Heater Wrap Installation		(cost/unit)	21	
Hot Water Pipe Insulation		(cost/unit)	21	
Attic Air Sealing		(cost/sf)	40,000	
Basement/Crawlspace Air Sealing		(cost/sf)	40,000	
Attic Insulation		(cost/sf ³)	40,000	
Basement/Crawlspace Insulation		(cost/sf ³)	40,000	
Attic Access Weatherstripping and Insulation		(cost/unit)	32	
Basement/Crawlspace Access Weatherstripping and Insulation		(cost/unit)	32	
Caulking and Weatherstripping of Windows and Doors		(cost/sf)	40,000	
Duct Sealing and Insulation		(cost/sf)	26,250	
Test Out: Post Combustion Testing		(cost/unit)	86	
Test Out: Post Duct Testing		(cost/unit)	21	
Test Out: Post Blower Door Test		(cost/unit)	43	
Collection from participating homeowners	-\$400*	(cost/unit)	43	-17,200

Total Base Bid Price (sum of prices above): _____

*400.00 will be collected from each participating homeowner by the Contractor, \$100 of which will be collected for the Home Energy Audit. This money will contribute to the value of the retrofit and will be deducted when invoicing the County.

ATTACHMENT 8

**ARRA SPECIAL TERMS AND CONDITIONS FOR FUNDS PROVIDED THROUGH
THE BE SMART (A BETTER BUILDINGS INITIATIVE) PROGRAM**

Recipients of funding awards through the Be SMART (a DOE Better Buildings initiative) Program must, if the Be SMART funding is provided through the Energy Efficiency and Conservation Block Grant Program (EECBG) of the American Recovery and Reinvestment Act of 2009 (ARRA), comply with the terms and conditions detailed below. For purposes of this document, “Recipient” means the Maryland Department of Housing and Community Development (DHCD) and “Sub-grantee” means the specific Entity provided funding through Be SMART, including contractors and subcontractors receiving funds obtained through a borrower.

A copy of this document will be attached and provided to eligible contractors for Be SMART activities, and will also be incorporated into loan documents for financing provided through Be SMART and funded through ARRA EECBG.

The Recipient agrees that it will provide a copy of these Special Terms and Conditions to all Sub-grantees and require the Sub-grantee’s full compliance with the applicable provisions.

1. Recovery Act Information

The American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA or Recovery Act), was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Recovery Act itself and as discussed below. The Recipient should begin planning activities for its sub-grantees, contractors and subcontractors, including having them obtain a Dun & Bradstreet DUNS number (or updating their existing DUNS record), and registering with the federal government’s Central Contractor Registration (CCR) if applicable.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, the Recipient must ensure that it and its Sub-grantees keep records for Recovery Act funds, and ensure those records comply with the requirements of the Recovery Act.

The Federal Government continues to develop the implementing instructions of the Recovery Act, particularly concerning specific final procedural requirements for the new reporting

requirements. The Recipient will be provided or otherwise made aware of these details as they become available. The Recipient must comply with all requirements of the Recovery Act. Any apparent inconsistency (or if the Recipient believes there is any inconsistency) between Federal statutes and regulations, including ARRA Requirements, and the terms and conditions contained in the MOU, must be referred to MEA for guidance and reconciliation.

Definitions

For purposes of this clause, “Covered Funds” means funds expended or obligated from appropriations under the Recovery Act. Covered Funds will have special accounting codes and will be identified as Recovery Act funds. Covered Funds must be disbursed by September 30, 2015.

“Non-Federal employer” means any employer with respect to Covered Funds – the contractor, subcontractor, sub-grantee or recipient, as the case may be, if the contractor, subcontractor, sub-grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

Recipients must include these special terms and conditions in any sub-award.

B. Segregation of Costs

The Recipient must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Restrictions of Use of Funds

None of the funds provided through Be SMART may be expended, directly or indirectly, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records and Interviews

The Recipient agrees that with respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,, that the United States Inspector General or any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or the United States Comptroller General is

authorized – (1) to examine any records of the Recipient or Sub-grantee, or any State or local agency administering such award that pertain to, and involve transactions relating to, the grant; and (2) to interview the Recipient or any officer or employee of its contractors Sub-grantee or any State or local agency administering such award, regarding such transactions. Nothing in this Paragraph shall be interpreted to limit or restrict in any way any existing authority of the United States Comptroller General. The Recipient shall include in all of its agreements with Sub-grantees who are performing work funded in whole or in part with ARRA funds pursuant to this award, and shall require all Sub-grantees to include with lower tier subcontractors, the language provided in this Paragraph.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant. Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the

Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;

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- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal.

The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement.

No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. False Claims Act

The Recipient and any of its Sub-grantees shall promptly refer to the United States Department of Energy or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

H. Information in Support of Recovery Act Reporting

The Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. The Recipient shall provide copies of backup documentation at the request of the MEA or its designees.

I. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

J. Certification

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, Mayor, or other Chief Executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

2. Reporting and Registration Requirements

The Recipient and Sub-grantees shall adhere to the following reporting requirements in addition to any other reporting requirements listed herein, in an MOU or any of its attachments, or otherwise made known to the Recipient or Sub-grantee. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards or payments. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future award by Federal agencies.

Restrictions: Reports submitted to the Recipient must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

- A. This award requires the Recipient and its sub-grantees to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- B. The Recipient and its Sub-grantees must maintain current registrations in the Federal government's Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active Federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

C. Sub-grantees shall report to DHCD (the Recipient) after the completion of each individual job or no later than the fifth (5th) calendar day of each month, for the previous month's reporting data, the following information, as well as any changes, amendments or modifications to such reporting data.

- Sub-grantee's legal name, address and any "doing-business-as" (DBA) name;
- Sub-grantee's congressional district (can be found at <http://www.house.gov/zip/ZIP2Rep.html>);
- Amount of the Sub-grantee's funding from DHCD;
- Location of project (if different from Sub-grantee's legal address);
- A description of the Sub-grantee's services.
- Jobs created and jobs retained through the use of the ARRA funds, as well as the total number of job hours funded through Be SMART funding on a per month basis.
- Specific project information (to be completed for each individual project and for each Sub-grantee working on a project) that include, but are not limited to the information outlined in Attachment B: Program Guidelines and Contractor Reporting Responsibilities.
- Start and end dates for project work.

3. Statement of Federal Stewardship

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

4. Site Visits

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Recipient must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

5. Publications

- A. Recipient and Grantees are encouraged to publish or otherwise make publicly available the results of the work conducted under this award.
- B. An acknowledgement of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgement: “This material is based upon work supported by the Department of Energy and the Maryland Department of Housing and Community Development under Award Number DE-EE000351/000.

Disclaimer: “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness or any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

6. Federal, State and Municipal Requirements

The Recipient and Sub-grantees must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

7. Intellectual Property Provisions and Contact Information

The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at:

[http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

The IP Service Provider for the Golden Field Office is Julia Moody. She may be reached at julia.moody@go.doe.gov or 303-275-4867.

i. Lobbying Restrictions

By accepting funds, the Recipient and Sub-grantees agree that none of the funds obligated shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

ii. National Environmental Policy Act (NEPA) Requirements

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The Recipient and Sub-grantees are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

The Recipient and Sub-grantees are prohibited from implementing energy efficiency improvements and renewable energy generation opportunities, including demolition, repair, replacement, installation, construction, disposal, or alteration activities until such time that you comply with the Waste Stream and Historic Preservation clauses.

If this project includes construction activities that are not included in the bounded scope of pre-approved activities, the Sub-grantees and DHCD must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

If the Recipient or Sub-grantees intend to make changes to the scope or objective of the project, the Recipient is required to contact the DOE Project Officer identified in Block 15 of the Assistance Agreement before proceeding. The Recipient and Sub-grantees must receive notification of approval from the DOE Contracting Officer prior to commencing with work beyond that currently approved.

DOE has made a NEPA determination for this award. All projects under this award are bounded in compliance with the uploaded and signed Statement of Work/Template for expedited NEPA review. The projects within the scope of the Statement of Work comprise of actions to conserve energy. Any projects that fall outside the Statement of Work are conditioned pending further NEPA review. DOE has made a final NEPA Determination for this project, which is categorically excluded from further NEPA review.

iii. Historic Preservation

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient and Sub-grantees are required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with the United States Department of Energy's (DOE) 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Recipient and Sub-grantees must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800.

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SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients and Sub-grantees shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients and Sub-grantees should be aware that the DOE will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to DOE. Recipient will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

c. Waste Stream

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or Sub-grantees' plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient and Sub-grantees shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

12. Decontamination and/or Decommissioning (D&D) Costs

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient or Sub-grantees for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's or Sub-grantees' facilities, or (ii) any costs which may be incurred by the Recipient or Sub-grantees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

13. Advance Understanding Concerning Publicly Financed Energy Improvement Programs

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other

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guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its Sub-grantees to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the Sub-grantee.

14. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

15. Buy American Requirements

[This Paragraph is only applicable if the Recovery Act funds are being used by the Recipient or Sub-grantee for the construction, alteration, maintenance or repair (including painting and decorating) of a public building or public work.]

(a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This term and condition implements Section 1605 of the Recovery Act, by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition. (2) This requirement does not apply to the material listed by the Federal Government as follows:
None.

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(3) The United States Department of Energy (DOE) may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any Recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Recipient does not submit a satisfactory explanation, the DOE award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the DOE award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is

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the unreasonable cost of the domestic iron, steel, or manufactured goods, the DOE award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the Recovery Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description Unit of measure Quantity Cost

(dollars)*

Item 1:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

16. Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements) – Section 1605 of the American Recovery and Reinvestment Act of 2009

(a) *Definitions.* As used in this award term and condition--

Designated country --

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or

(4) An Agreement between Canada and the United States of America on Government

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Procurement country (Canada).

Designated country iron, steel, and/or manufactured goods –

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good –

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods.

- (1) The award term and condition described in this section implements-

- (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

- (ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

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(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: None.

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that--

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the

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award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity
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Cost

(dollars)*

Item 1:

Foreign steel, iron, or manufactured good	_____	_____
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Domestic steel, iron, or manufactured good	_____	_____
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Item 2:

Foreign steel, iron, or manufactured good	_____	_____
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Domestic steel, iron, or manufactured good	_____	_____
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[List name, address, telephone number, email address, and contact for suppliers surveyed.

Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

17. Prevailing Wage Rate Requirements (Davis-Bacon Act)

[This Paragraph is applicable for non-residential uses of Be SMART funds by the Recipient or Sub-grantees.]

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. **Prevailing wage rates may be found at <http://www.gpo.gov/davisbacon/allstates.html>.** Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct Recipients concerning application of the standard Davis-Bacon contract clauses set forth in that section. **Recipients of Recovery Act monies shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts with contractors (and in subsequent contracts with sub contractors) that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating). These contractual requirements are also listed below in Paragraph 12 of these Special Terms and Conditions.**

(b) For additional guidance on the wage rate requirements of section 1606, contact the MD DHCD. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

18. Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at

<http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at

<http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each sub-recipient (sub-grantee), and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients (sub-grantees) to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

19. Davis-Bacon Act and Contract Work Hours and Safety Standard Act

[This Paragraph is applicable for non-residential uses of Be SMART funds by the Recipient or Sub-grantees]

Definitions: For purposes of this clause, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(1) “Award” means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients

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(other than a unit of State or local government whose own employees perform the construction) Sub-recipients, Contractors, and subcontractors.

(2) “Contractor” means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Sub-recipients, and Recipients’ or Sub-recipients’ contractors, subcontractors, and lower-tier subcontractors. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.”

(3) “Contract” means a contract executed by a Recipient, Sub-recipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) “Sub-award” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Sub-recipient or by a Sub-recipient to a lower-tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.

(7) “Sub-recipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR

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part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Sub-recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Sub-recipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and

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mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

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(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered

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program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Sub-recipient, the Recipient's, and Sub-recipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Sub-recipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall

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require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Sub-recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Sub-recipient, and Recipient's and Sub-recipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security

number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) Rates of Wages

The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.